



Heather Shirley Smith
Deputy General Counsel

Duke Energy
40 W. Broad Street
Suite 690
Greenville, SC 29601

o 864.370.5045
f 864.370.5183

heather.smith@duke-energy.com

March 7, 2018

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
The Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia SC 29210

Re: Application Regarding the Acquisition of Progress Energy, Incorporated by Duke Energy Corporation and Merger of Progress Energy Carolinas, Incorporated and Duke Energy Carolinas, LLC
Docket Number: 2011-158-E

Dear Mrs. Boyd:

As information, enclosed for filing is Duke Energy Progress, LLC's Motion to Amend Regulatory Conditions filed on March 5, 2018 with the North Carolina Utilities Commission Dockets E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A

Please do not hesitate to contact me if you have any questions or require any further information.

Sincerely,

Heather Shirley Smith

Enclosures

cc: Ms. Nanette Edwards, Esq., Office of Regulatory Staff
Ms. Dawn Hipp, Office of Regulatory Staff
Mr. Jeffery M. Nelson, Esq. Office of Regulatory Staff
Ms. Shannon Bowyer Hudson, Esq., Office of Regulatory Staff
Mr. Michael Seaman-Huynh, Office of Regulatory Staff
All parties of record

March 2, 2018

VIA ELECTRONIC DELIVERY

Martha Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina

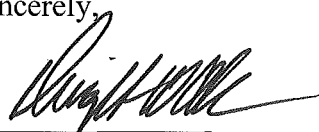
RE: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC's and Piedmont Natural Gas Company, Inc.'s Motion to Amend Regulatory Conditions in Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A.

Dear Mrs. Jarvis:

Please find enclosed the Motion to Amend Regulatory in the above referenced dockets.

Thank you for your assistance in this matter.

Sincerely,


Dwight W. Allen

Enclosure

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1095A
DOCKET NO. E-7, SUB 1100A
DOCKET NO. G-9, SUB 682A

In the Matter of)	
Motion of Duke Energy Corporation, Duke)	
Energy Carolinas, LLC, Duke Energy)	MOTION TO AMEND
Progress, LLC, and Piedmont Natural Gas)	REGULATORY CONDITIONS
Company, Inc. to Amend Regulatory)	
Conditions)	

NOW COME Duke Energy Corporation (“Duke Energy”), Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”), and Piedmont Natural Gas Company, Inc. (“Piedmont”) (hereinafter referred to in combination as “Companies” or “Applicants”), pursuant to N.C. Gen. Stat. § 62-31 and Rule R1-5 of the Rules of Practice and Procedure of the North Carolina Utilities Commission (“NCUC” or the “Commission”), and hereby file this Motion to Amend Regulatory Conditions established, most recently, in the Matter of Application for Duke Energy Corporation and Piedmont Natural Gas Company, Inc., to Engage in a Business Combination Transaction and Address Regulatory Conditions and Code of Conduct in Docket Nos. E-2, Sub 1095, E-7, Sub 1100 and G-9, Sub 682. In support thereof, Companies respectfully show the Commission the following:

1. Duke Energy is a corporation duly organized and existing under the laws of Delaware and is headquartered at 550 S. Tryon Street, Charlotte, North Carolina 28202. DEC and DEP, wholly-owned subsidiaries of Duke Energy, are limited liability companies organized, existing, and operating under the laws of North Carolina.

Piedmont is also a wholly-owned subsidiary of Duke Energy and is a North Carolina corporation.

2. DEC is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 2.5 million retail customers in a service area that covers more than 24,000 square miles in portions of central and western North Carolina and western South Carolina. DEC also sells electricity in the wholesale market to various municipal, cooperative, and investor-owned electric utilities.

3. DEP is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 1.5 million retail customers in a service area that covers more than 34,000 square miles in portions of eastern, central, and western North Carolina and eastern South Carolina. DEP also sells electricity in the wholesale market to various municipal, cooperative and investor-owned electric utilities.

4. Piedmont is a natural gas utility authorized to distribute natural gas services to customers in its service territory in North Carolina, South Carolina and Tennessee. Piedmont's service territory in North Carolina and South Carolina encompasses approximately 39,000 square miles, and it provides services to approximately 1 million customers in the three states in which it provides distribution services.

5. DEC, DEP and Piedmont are public utilities under the laws of North Carolina, and their respective public utility operations are subject to the jurisdiction of this Commission.

6. Duke Energy's headquarters and general offices are located at 550 S. Tryon Street, Charlotte, North Carolina 28202.

7. The names and addresses of Applicants' attorneys are:

Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
NCRH 20
410 S. Wilmington Street
Raleigh, North Carolina 27601
Tel: (919) 546-6733
Kendrick.Fentress@duke-energy.com

Brian S. Heslin
Deputy General Counsel
Duke Energy Corporation
550 S. Tryon Street, 45th Floor
Charlotte, NC 28202
Tel: (980) 373-0550
Brian.Heslin@duke-energy.com

Dwight W. Allen
The Allen Law Offices, PLLC
1514 Glenwood Avenue, Suite 200
Raleigh, North Carolina 27608
Tel: (919) 838-0529
DAllen@theallenlawoffices.com

Copies of all pleadings, testimony, orders, and correspondence in this proceeding should be served upon the attorneys listed above.

INTRODUCTION

As a result the Commission's approval of past mergers involving Duke Energy, including its 2006 merger with Cinergy Corp. ("Cinergy Merger"), its 2012 merger with Progress Energy, Inc. ("Duke/Progress Merger") and, recently, its 2016 merger with Piedmont ("Piedmont Merger"), Duke Energy, DEC, DEP, and Piedmont are subject to more than 95 Regulatory Conditions, relating to almost every aspect of their operations in North Carolina and beyond. Specifically, Sections II and III of the Regulatory Conditions include Regulatory Conditions that were intended "to protect the jurisdiction of the Commission against the risk of federal preemption. . . ." *Order Approving Merger*

Subject to Regulatory Conditions and Code of Conduct, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682 at Appendix A, p. 5. These Regulatory Conditions include the Companies and their affiliates waiving certain federal rights and numerous requirements and “gatekeeping” procedures imposed upon DEC, DEP and Piedmont, before they may enter into or file an affiliate agreement at the NCUC, enter into certain wholesale agreements, or file affiliate agreements or other matters at the Federal Energy Regulatory Commission (“FERC”) subject to the FERC’s jurisdiction under the Federal Power Act.

Two recent decisions, one by the DC Circuit Court of Appeals and the other by the FERC, have raised questions on the validity of some of the Regulatory Conditions pertaining to assertion of the NCUC’s jurisdiction over certain wholesale and affiliate agreements and other filings made at the FERC. The subject matters of the decisions are different, but the legal issues addressed are similar. In the DC Circuit, the City of Orangeburg, South Carolina (“Orangeburg”) challenged the FERC’s approval of the Joint Dispatch Agreement (“JDA”) as part of the Duke/Progress merger. *Orangeburg v. FERC*, 862 F.3d 1071 (D.C. Cir. 2017) (“*Orangeburg*”). The DC Circuit vacated the FERC’s approval of the JDA and remanded the case to the FERC. Following that decision, the FERC rejected DEC’s and DEP’s petition for approval of an affiliate As-Available Capacity Sales Agreement. *Order Rejecting As-Available Capacity Sales Agreement*, 161 FERC ¶ 61,029, October 10, 2017.

Both the DC Circuit and the FERC expressed concerns that the Regulatory Conditions infringed upon federal jurisdiction, and the DC Circuit and the FERC signaled that they may preempt those Regulatory Conditions currently in effect. Furthermore, the

Companies are concerned that the *Order Rejecting As-Available Capacity Sales Agreement* indicates that the DC Circuit's opinion in *Orangeburg* has given the FERC a greater sense of urgency in addressing the issues pertaining to certain Regulatory Conditions raised by Orangeburg. Therefore, the Companies believe the FERC will reject their filings due to their required references to, or inclusion of, these Regulatory Conditions. The Companies believe that requesting the NCUC, which has more familiarity and expertise with these Regulatory Conditions, to address this issue at this time is preferable to risking more pervasive preemptive action of NCUC authority by the FERC. For these reasons, the Companies submit for approval the attached proposed revisions to the Regulatory Conditions pertaining to federal preemption. The Companies are not at this time proposing changes to the majority of the Regulatory Conditions. The proposed revisions strike a balance between preserving the NCUC's jurisdiction as intended by Sections II and III of the Regulatory Conditions and mitigating the risk of pervasive preemptive action by the FERC.

The Orangeburg Decision

This case arose following Orangeburg's challenge to the FERC's approval of the Duke/Progress merger. The dispute itself dates back to 2008, when Orangeburg contracted with DEC to provide wholesale power to the city for 10 years. Under the agreement, DEC would have treated Orangeburg as a native load customer, which would allow Orangeburg to purchase power at lower system average costs instead of higher incremental costs. The agreement, however, required consideration of certain Regulatory Conditions imposed on DEC as a result of the Cinergy merger. Under these Regulatory Conditions, DEC was required to provide their lowest cost power to its retail native load

customers in North Carolina and plan their respective systems with that goal. In addition, DEC was required to provide the NCUC with notice if the utility intended to treat any new wholesale customer as a native load customer, and the NCUC reserved the right to decide for itself whether to recognize native-load status when it came to its own retail ratemaking, accounting, and reporting. After DEC provided the NCUC 30-days advance notice of its agreement with Orangeburg, the Commission issued a declaratory ruling stating that it would set DEC's retail rates as if DEC received the incremental costs of its power in its sales to Orangeburg. *Order on Advance Notice and Joint Petition for Declaratory Ruling*, Docket No. E-7, Sub 858, March 30, 2009. In 2009, Orangeburg filed a petition, *Application and Petition for Declaratory Order and Request for Expedition And Summary Disposition of the City of Orangeburg*, Docket No. EL09-63-000 (July 2, 2009), with the FERC challenging the NCUC's ruling and its "gatekeeping" provisions, which the FERC rejected in 2015 as moot because the agreement between DEC and Orangeburg was terminated. *Order Dismissing Petition for Declaratory Order*, 151 FERC ¶ 61,241 (June 18, 2015).

As part of its review of the subsequent Duke-Progress merger, the FERC reviewed the JDA. Orangeburg intervened in the FERC proceeding, arguing that section 3.2 of the JDA "effectively incorporated the NCUC regulatory regime" and resulted in usurpation of the FERC's exclusive jurisdiction over wholesale power rates. *Orangeburg*, 862 F.3d at 1076.¹ Additionally, Orangeburg argued that the JDA contained Regulatory Conditions that allowed Duke Energy, Progress Energy, and the NCUC to unduly discriminate against wholesale customers by arbitrarily dividing wholesale sales into

¹ Section 3.2 of the JDA contained several Regulatory Conditions that were intended to be "Limits on the Scope and Effect of the Agreement."

native load and non-native load. The FERC rejected both arguments by Orangeburg, relying on FERC *Order No. 2000*, affirming a state's authority to accord preferential treatment to native load customers. Orangeburg appealed to the DC Circuit, which vacated the FERC's decision and remanded the case back to the FERC. *Orangeburg*, 862 F.3d 1071.

In pertinent part, the Court determined Orangeburg suffered an injury-in-fact caused by the FERC approval of the JDA, which is redressable by the Court. One important note is the DC Circuit's criticism of FERC's "acquiescence" to the NCUC. The Commission *was* offering a view on NCUC's authority: contrary to Orangeburg's protest, the FERC concluded that the provisions incorporating the state regulatory regime "pertain[ed] fundamentally to *retail* ratemaking." *Id.* at 1081. Furthermore the Court stated, "FERC's approach to the JDA fits within a pattern of acquiescence." *Id.* The DC Circuit further noted that shortly after the 2008 Duke-Orangeburg deal was frustrated by the 2009 NCUC Declaratory Ruling, Orangeburg had filed a petition with the FERC requesting that the Commission find that NCUC's ruling was preempted by federal law. *Id.*

In vacating the FERC's ruling, the Court focused on the obligations of the FERC to avoid disparate rate treatment. "We accept disparate treatment between ratepayers only if FERC offers a valid reason for the disparity. Unless the FERC offers such a valid reason, its decision to approve disparate treatment of wholesale ratepayers is arbitrary and capricious." *Id.* at 1084. The Court determined Orangeburg suffers disparate rate treatment under the JDA, and stated in regards to the FERC's Order, "On its face, the Order does not supply a reason for the JDA's disparate treatment of native-load and non-

native-load interstate wholesale customers, especially in light of NCUC's alleged control over which customers enjoy native-load status.” *Id.* at 1085. The Court determined *Order No. 2000*, on which the FERC based its entire decision, was insufficient authority as *Order No. 2000* dealt with regional transmission authorities and the power of the states to require retail sales of its lowest cost power to state customers. Orangeburg’s petition, however, concerned wholesale rates.

The cited passage from *Order No. 2000* appears to stand for the proposition that, for example, NCUC may require Duke to sell its lowest cost power to retail native-load customers in North Carolina. But that proposition is uncontested: Orangeburg protests NCUC's control over wholesale native-load customers, not the state commission's imposition of requirements for retail native-load customers.

Id. at 1086. Additionally, the Court stated that *Order No. 2000*, as interpreted by the FERC, appears to be in conflict with *Order No. 888*, which bars regulatory obligations requiring utilities to treat certain wholesale customers as native load, because the Commission's interpretation of *Order No. 2000* authorizes NCUC to require DEC to serve the "lowest cost power" to native-load wholesale customers. Finally, the Court determined that the FERC’s interpretation of *Order No. 2000* suggests the NCUC has the authority to regulate interstate wholesale power sales which plainly intrudes on FERC authority. The DC Circuit concluded that, “insofar as the Commission attempts to justify disparate treatment of interstate wholesale customers by invoking a state commission's authority, the FERC's interpretation of *Order No. 2000* is unsound.” *Id.* at 1087.

Order Rejecting As-Available Capacity Sales Agreement

On May 17, 2017, after an extended advance notice review period at the NCUC, DEC and DEP filed an As-Available Capacity Sales Agreement (the “Agreement”) with the FERC for approval. This affiliate Agreement permitted the sale of excess short-term

capacity between DEC and DEP. Without approval of the Agreement, DEP and DEC would be forced to procure short-term energy at higher prices or commit generation resources that would otherwise be left offline. Therefore, this Agreement benefitted customers through the purchase of short-term capacity between DEC and DEP at lesser cost than if they went to procure capacity in the marketplace.

As part of the terms and conditions of the Agreement, DEC and DEP included the required provisions of Regulatory Condition 3.1(b). Upon review, the FERC recognized the benefits of the Agreement but denied approval. In its determination the FERC wrote, “While we recognize the benefits that can be achieved by the (Agreement), the applicants have not met their burden of demonstrating the capacity agreement is just and reasonable and not unduly discriminatory or preferential.” The decision continued, “Article XI of the (Agreement) includes provisions that pertain fundamentally to retail ratemaking. We find the inclusion of such provisions not appropriate in a Commission-jurisdictional wholesale agreement.” *Order Rejecting As-Available Capacity Sales Agreement*, 161 FERC ¶ 61,029 at P. 12 (2017). The FERC denied approval without prejudice, allowing DEP and DEC to refile in the future to address the concerns of the FERC. The FERC did not indicate it had any concerns with the Agreement other than the inclusion of these provisions.

At this point, two different legal authorities have expressed serious concerns with certain Regulatory Conditions as infringing on federal jurisdiction. The DC Circuit ruled FERC’s reasoning for the approval of the JDA to be arbitrary and capricious, in part due to the inclusion of provisions required by the Regulatory Conditions. The DC Circuit appears highly skeptical of the NCUC’s required inclusion of provisions under certain

Regulatory Conditions. Additionally, the FERC expressed similar skepticism concerning the legality of these Regulatory Conditions. While the FERC did not preempt these Regulatory Conditions outright, the issue of preemption was not before the FERC at that time. The timing of both decisions suggests that the FERC may have been reacting to the DC Circuit in issuing its Order denying approval of the Capacity Sales Agreement. Notably, both decisions included references to the Regulatory Conditions creating disparate or discriminatory treatment without reasonable justification.

The DC Circuit's Decision and the FERC Decision Warrant a Review and Modification of Certain Regulatory Conditions

The DC Circuit's Orangeburg decision and the FERC's *Order Rejecting As-Available Capacity Sales Agreement* justify a review and modification of some of the Regulatory Conditions established in earlier Duke Energy mergers and most recently approved in the Duke Energy/Piedmont Merger. In the final analysis, these Regulatory Conditions as they now exist are unlikely to survive continued FERC review. The Companies believe that requesting the NCUC to address these potentially concerning Regulatory Conditions that it has reviewed and approved in previous merger dockets is preferable and more advantageous to the Companies' ratepayers than risking more pervasive preemption of NCUC authority by the FERC. FERC's rejection of the As-Available Capacity Sales Agreement due to the inclusion of the provisions required by the Regulatory Conditions already has deprived ratepayers of benefits that they would have received under the Agreement. The Companies have identified those Regulatory Conditions that appear to be the most ripe for preemption by the FERC; however, to minimize potential changes to the Regulatory Conditions, the Companies have limited

their proposed amendments to the Regulatory Conditions that are most impacted by the two decisions. This is not an exhaustive list of the Regulatory Conditions that may need further review.

The following Regulatory Conditions warrant review and possible amendment:

Regulatory Condition 2.1 – Waiver of Certain Federal Rights – Given the recent FERC Order and the DC Circuit’s *Orangeburg* decision, it is questionable whether the Commission can require the Companies to waive a right that is given by Federal Law if waiving that right limits federal jurisdiction.

Regulatory Condition 3.1(a) – Advance Notice of Affiliate Contracts to be Filed with the FERC – This provision is at the core of the gatekeeping criticism voiced by the DC Circuit. The last sentence of this provision seems particularly troublesome. It enables the Commission to serve as gatekeeper to the FERC by enacting provision 3.1(c) and sets up a specific procedure to deal with filings that are subject to FERC jurisdiction.

Regulatory Condition 3.1(b)(i)-(iv) – Required Provisions in Affiliate Contracts – These provisions require the Companies to include specific language in affiliate contracts. This language was included in both the JDA and in the *Order Rejecting As-Available Capacity Sales Agreement*. Additionally, Regulatory Condition 3.1(b)(i) has been subject to waivers by the NCUC because it effectively creates an illusory contract. See e.g. *Order Accepting Affiliate Agreement and Allowing Limited Waiver of Regulatory Condition*, Docket Nos. E-2, Sub 1118 and E-7, Sub 1120 (Nov. 21, 2016); see also, *Bowman v. Hill*, 45 N.C. App. 116, 117, 262 S.E.2d 376, 377 (N.C. Ct. App. 1979) (“An apparent promise, according to its terms, makes performance optional with the promiser no matter what may happen, . . . is in fact no promise. Such an expression is often called

an illusory promise.”). Additionally, these provisions were removed from the JDA upon the request of the FERC. The FERC did not opine on the Commission’s authority to impose such requirements, but the focus on the FERC occasioned by the DC Circuit’s decision is likely to change that.

Regulatory Condition 3.1(c)(i)-(ii) – Authority over Affiliate Contracts Required or Intended to Be Filed with the FERC – These provisions are fundamental to the accusations that the Commission is inappropriately serving as gatekeeper to the FERC. The DC Circuit and the FERC have indicated that they are reluctant to allow the Commission to have first approval over matters involving federal jurisdiction.

Regulatory Condition 3.1(d) & (e) – Similar to the previous provisions, these sections give the Commission authority over federal jurisdiction and may be preempted by the FERC and the DC Circuit. Arguably, sub-section (e) is almost a reverse preemption of the State over the FERC.

Regulatory Condition 3.3(c)(ii) – This provision effectively allows the Commission to invalidate federal law. It infringes on federal jurisdiction and appears to reverse the Supremacy Clause of the Constitution. If an issue arises as to transfer value that is a matter of federal law, it would appear that any concerns should be addressed by a petition to the FERC.

Regulatory Condition 3.3(d) – This provision effectively allows the Commission to control the contents of Applications filed with the FERC.

Regulatory Condition 3.7 (b)-(d) – Wholesale Power Contracts Granting Native Load Priority – This provision requires 30-day advance notice to the Commission of DEC’s or DEP’s intention to grant Native Load Priority to a wholesale customer (other

than those historically served, as listed in Regulatory Conditions 3.7 (b)-(c)). Again, this restricts priority of native load to retail customers, and infringes on the FERC's power to give native load status to wholesale customers. A simple notice provision for information may be acceptable, but setting the process up under the detailed procedures of Regulatory Condition 13.2 clearly amounts to a gatekeeping function.

Regulatory Condition 3.8(b)-(e) – Additional Provisions Regarding Wholesale Contracts Entered Into by DEC or DEP as Sellers – Essentially, these provisions provide that the NCUC retains the right to assign, allocate, impute and make pro-forma adjustments with respect to the revenues and costs associated with both DEC's and DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes; and that DEC and DEP (or affiliates) shall not assert that the Commission's authority to do so is subject to preemption. This appears to be contrary to law. In the final analysis, the Commission cannot simply ignore the actions by the FERC related to wholesale ratemaking matters. To the extent that the Commission or Public Staff believes that a FERC decision impinges on State retail ratemaking authority, the proper remedy is to file a petition with the FERC.

Regulatory Condition 3.9 (a)-(c), (g) & (g)(vii) – Other Provisions – These provisions allow the Commission to intrude on federal jurisdiction by requiring the Companies not to assert that FERC approval preempts the Commission's authority and are likely to be preempted. Sections (c) and (d) specifically amount to another gatekeeping function. Section (g)(vii) attempts to prevent the FERC from implementing decisions that could affect North Carolina ratepayers.


Regulatory Condition 3.10 – FERC Filings and Orders – This provision has been edited in accordance with the regulatory compact to require the Companies to keep the Commission appropriately informed of their activities.

Regulatory Condition 13.2 – Advance Notice Filings – This is essentially a procedural provision. Although this provision could be defined as the Commission serving as gatekeeper to Federal Jurisdiction, the proposed changes to Regulatory Conditions 3.1, 3.3, and 3.9 effectively remove the gatekeeper role of the Commission for the purposes outlined in those sections. Therefore, it may be unnecessary to change this procedural provision.

For reference, the Companies have attached, as Appendix A, a copy of the Regulatory Conditions, with proposed changes noted. In the final analysis, the question is whether this Commission should consider changes to the Regulatory Conditions that may be warranted as a result of the decisions by the DC Circuit and the FERC. The Companies believe that the best course of action is for this Commission to address the gatekeeping issues that have been raised. The alternative is to do nothing and wait for the FERC to take preemptive action.

WHEREFORE, Applicants respectfully request the Commission to amend the Regulatory Conditions approved in the Duke Energy / Piedmont Merger as proposed herein.

Respectfully submitted this 2nd day of March, 2018.

By: 
Dwight W. Allen
The Allen Law Offices, PLLC
1514 Glenwood Ave., Suite 200
Raleigh, North Carolina 27608
Tel: (919) 838-0529
Dallen@theallenlawoffices.com

Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
NCRH 20
410 S. Wilmington Street
Raleigh, North Carolina 27601
Tel: (919) 546-6733
Kendrick.Fentress@duke-energy.com

Brian S. Heslin
Deputy General Counsel
Duke Energy Corporation
550 S. Tryon St., 45th Floor
Charlotte, NC 28202
Tel: (980) 373-0550
Brian.heslin@duke-energy.com

ATTORNEYS FOR THE COMPANIES

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Companies' Motion to Amend Regulatory Conditions has been served by electronic mail (e-mail), hand delivery, or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to parties of record.

This, the 2nd day of March, 2018.



Dwight W. Allen
The Allen Law Offices, PLLC
1514 Glenwood Ave., Suite 200
Raleigh, North Carolina 27608
Tel: (919) 838-5175
Brady.Allen@theallenlawoffices.com

DOCKET NO. E-2, SUB 1095

DOCKET NO. E-7, SUB 1100

DOCKET NO. G-9, SUB 682

REGULATORY CONDITIONS AND CODE OF CONDUCT

TABLE OF CONTENTS

SECTION I	DEFINITIONS.....	1
SECTION II	AUTHORITY, SCOPE, AND EFFECT	4
2.1	Waiver of Certain Federal Rights.....	5
2.2	Limited Right to Challenge Commission Orders	5
2.3	Waiver Request	5
SECTION III	PROTECTION FROM PREEMPTION.....	5
3.1	Transactions between DEC, DEP, Piedmont, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to be Filed with the FERC; Annual Certification	5
3.2	Financing Transactions Involving DEC, DEP, Piedmont, Duke Energy, or Other Affiliates	8
3.3	Ownership and Control of Assets Used by DEC, DEP, and Piedmont to Supply Electric Power or Natural Gas Services to North Carolina Customers; Transfer of Ownership or Control	8
3.4	Purchases and Sales of Electricity and Natural Gas between DEC, DEP, Piedmont, and Duke Energy, Other Affiliates, or Nonpublic Utility Operations	9
3.5	Least Cost Integrated Resource Planning and Resource Adequacy	9
3.6	Priority of Service.....	10
3.7	Wholesale Power Contracts Granting Native Load Priority.....	10
3.8	Additional Provisions regarding Wholesale Contracts Entered Into by DEC or DEP as Sellers.....	11
3.9	Other Protections.....	13
3.10	FERC Filings and Orders.....	15
SECTION IV	JOINT DISPATCH.....	16
4.1	Conditional Approval and Notification Requirement.....	16
4.2	Advance Notice Required	16
4.3	Function in DEC or DEP	16
4.4	No Limitation on Obligations	16
4.5	Protection of Retail Native Load Customers	17
4.6	Treatment of Costs and Savings.....	17
4.7	Required Records.....	17
4.8	Auditing of Negative Margins	17
4.9	Protection of Commission's Authority	17
4.10	Preventive Action Required	18
4.11	Modification and Termination.....	18
4.12	Hold Harmless Commitment.....	18

SECTION V	TREATMENT OF AFFILIATE COSTS AND RATEMAKING.....	18
5.1	Access to Books and Records	18
5.2	Procurement or Provision of Goods and Services by DEC, DEP, or Piedmont from or to Affiliates or Nonpublic Utility Operations	18
5.3	Location of Core Utility Functions	20
5.4	Service Agreements and Lists of Services.....	21
5.5	Charges for and Allocations of the Costs of Affiliate Transactions.....	21
5.6	Procedures Regarding Interim Changes to the CAM or Lists of Goods and Services for which 15 Days' Notice Is Required	22
5.7	Annual Reports of Affiliate Transactions	22
5.8	Third-Party Independent Audits of Affiliate Transactions	22
5.9	Ongoing Review by Commission	24
5.10	Future Orders	24
5.11	Review by the FERC.....	24
5.12	Biannual Review of Certain Transactions by Internal Auditors	25
5.13	Notice of Service Company and Non-Utility Affiliates FERC Audits.....	25
5.14	Acquisition Adjustment.....	25
5.15	Non-Consummation of Merger.....	25
5.16	Protection from Commitments to Wholesale Customers.....	26
5.17	Joint Owner-Specific Issues.....	26
5.18	Inclusion of Cost Savings in Future Rate Proceedings	26
5.19	Reporting of Costs to Achieve	26
5.20	Accounting for Costs to Achieve Related to Historical Events Involving DEP	27
5.21	Liabilities of Cinergy Corp. and Florida Progress Corporation	27
5.22	Hold Harmless Commitment	28
5.23	Cost of Service Manuals	28
5.24	Direct Charging and Positive Time Reporting for Piedmont.....	28
5.25	Piedmont Corporate Cost Allocations Among State Jurisdictions.....	28
5.26	Allocation of Fully-distributed Costs to Piedmont's Nonpublic Utility Operations	28
SECTION VI	CODE OF CONDUCT	28
6.1	Obligation to Comply with Code of Conduct	28
SECTION VII	FINANCINGS	29
7.1	Accounting for Equity Investment in Holding Company Subsidiaries.....	29
7.2	Accounting for Capital Structure Components and Cost Rates	29
7.3	Accounting for Equity Investment in DEC, DEP, and Piedmont.....	29
7.4	Reporting of Capital Contributions	29
7.5	Identification of Long-term Debt Issued by DEC, DEP, or Piedmont	29
7.6	Procedures Regarding Proposed Financings	30
7.7	Money Pool Agreement.....	31
7.8	Borrowing Arrangements.....	32
7.9	Long-Term Debt Fund Restrictions.....	32

SECTION VIII	CORPORATE GOVERNANCE/RING FENCING	32
8.1	Investment Grade Debt Rating.....	32
8.2	Protection Against Debt Downgrade.....	33
8.3	Distributions from DEC, DEP, and Piedmont to Holding Company.....	33
8.4	Debt Ratio Restrictions.....	33
8.5	Limitation on Continued Participation in Utility Money Pool Agreement and Other Joint Debt and Credit Arrangements with Affiliates	33
8.6	Notice of Level of Non-Utility Investment by Holding Company System ..	33
8.7	Notice by Holding Company of Certain Investments.....	34
8.8	Ongoing Review of Effect of Holding Company Structure.....	34
8.9	Investment by DEC, DEP, or Piedmont in Non-regulated Utility Assets and Non-utility Business Ventures	34
8.10	Investment by Holding Company in Exempt Wholesale Generators.....	34
8.11	Notice by DEC, DEP, or Piedmont of Default or Bankruptcy of Affiliate...	35
8.12	Annual Report on Corporate Governance.....	35
SECTION IX	FUTURE MERGERS AND ACQUISITIONS.....	36
9.1	Mergers and Acquisitions by or Affecting DEC, DEP, or Piedmont.....	36
9.2	Mergers and Acquisitions Believed Not to Have an Effect on DEC's, DEP's, or Piedmont's Rates or Service.....	36
SECTION X	STRUCTURE/ORGANIZATION	37
10.1	Transfer of Services, Functions, Departments, Rights, Assets, or Liabilities.....	37
10.2	Notice and Consultation with Public Staff regarding Proposed Structural and Organizational Changes	37
SECTION XI	SERVICE QUALITY	38
11.1	Overall Service Quality	38
11.2	Best Practices.....	38
11.3	Quarterly Reliability Reports	38
11.4	Notice of NERC Audit	38
11.5	Right-of-Way Maintenance Expenditures (DEC and DEP)	38
11.6	Right-of-Way Maintenance Expenditures (Piedmont)	38
11.7	Right-of-Way Clearance Practices (DEC and DEP).....	39
11.8	Right-of-Way Clearance Practices (Piedmont)	39
11.9	Meetings with Public Staff.....	39
11.10	Customer Access to Service Representatives and Other Services	39
11.11	Customer Surveys	39
SECTION XII	TAX MATTERS	39
12.1	Costs under Tax Sharing Agreements.....	39
12.2	Tax Benefits Associated with Service Companies	40

SECTION XIII	PROCEDURES	40
13.1	Filings That Do Not Involve Advance Notice.....	40
13.2	Advance Notice Filings	40
SECTION XIV	COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT.....	42
14.1	Ensuring Compliance with Regulatory Conditions and Code of Conduct	42
14.2	Designation of Chief Compliance Officer	42
14.3	Annual Training.....	43
14.4	Report of Violations	43
SECTION XV	PROCEDURES FOR DETERMINING LONG-TERM SOURCES OF PIPELINE CAPACITY AND SUPPLY	43
15.1	Cost-benefit Analysis	43
15.2	Ownership and Control of Contract.....	43
CODE OF CONDUCT		

REGULATORY CONDITIONS

These Regulatory Conditions set forth commitments made by Duke Energy Corporation (Duke Energy) and its public utility subsidiaries, Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), and Piedmont Natural Gas Company, Inc. (Piedmont), as a precondition of approval of the application by Duke Energy and Piedmont pursuant to G.S. 62-111(a) for authority to engage in their proposed business combination transaction. These Regulatory Conditions, which become effective only upon closing of the Merger, shall apply jointly and severally to Duke Energy, DEC, DEP, and Piedmont, and shall be interpreted in the manner that most effectively fulfills the Commission's purposes as set forth in the preamble to Section II of these Regulatory Conditions.

SECTION I DEFINITIONS

For the purposes of these Regulatory Conditions, capitalized terms shall have the meanings set forth below. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this document or as commonly used in the electric or natural gas utility industry.

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of these Regulatory Conditions, Duke Energy and each business entity so controlled by it are considered to be Affiliates of DEC, DEP, and Piedmont, and DEC, DEP, and Piedmont are considered to be Affiliates of each other.

Affiliate Contract: (a) Any contract or agreement between or among DEC, DEP, and Piedmont or between or among DEC, DEP, or Piedmont and any other Affiliate or proposed Affiliate, and (b) any contract or agreement between such other Affiliate or proposed Affiliate and another Affiliate that is related to the same subject matter and is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service. Such contracts and agreements include, but are not limited to, service, operating, interchange, pooling, wholesale power sales agreements and agreements involving financings and asset transfers and sales, and the Joint Dispatch Agreement.

Catawba Joint Owners: The North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency No. 1, and Piedmont Municipal Power Agency. For purposes of these Regulatory Conditions, DEC is not included in the definition of Catawba Joint Owners.

Code of Conduct: The minimum guidelines and rules approved by the Commission that govern the relationships, activities, and transactions between and among the public utility operations of DEC, DEP, and Piedmont, Duke Energy, the other Affiliates of DEC, DEP, and Piedmont, and the Nonpublic Utility Operations of DEC, DEP, and Piedmont, as those guidelines and rules may be amended by the Commission from time to time.

Commission: The North Carolina Utilities Commission.

Customer: Any retail electric customer of DEC or DEP in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP or Piedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress, LLC, the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within the DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and Piedmont, and any successor company.

Effect on DEC's, DEP's, or Piedmont's Rates or Service: When used with reference to the consequences to DEC, DEP, or Piedmont of actions or transactions involving an Affiliate or Nonpublic Utility Operation, this phrase has the same meaning that it has when the Commission interprets G.S. 62-3(23)(c) with respect to the affiliation covered therein.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service to other suppliers.

Federal Law: Any federal statute or legislation, or any regulation, order, decision, rule or requirement promulgated or issued by an agency or department of the federal government.

FERC: The Federal Energy Regulatory Commission.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good or service supplied by or from DEC, DEP, or Piedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding, (b) for each good or service supplied to DEC, DEP, or Piedmont, the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good or service supplied by or from DEC, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's, DEP's, or Piedmont's most recent general rate case proceeding, as applicable.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998, on June 22, 2011, and as amended and refiled on June 12, 2012.

Market Value: The price at which property, goods, or services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Piedmont.

Native Load Priority: Power supply service being provided or electricity otherwise being sold with a priority of service equivalent to that planned for and provided by DEC or DEP to their respective Retail Native Load Customers.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering and billing, and standby service.

Non-Native Load Sales: DEC's or DEP's sales of energy at wholesale, not including transactions between DEC and DEP pursuant to the JDA and not including service to customers served at Native Load Priority.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP, or Piedmont involving activities (including the sales of goods or services) that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS, other than a Utility Affiliate, DEC, DEP, or Piedmont.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Natural Gas Services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of DEP and is a subsidiary of Duke Energy, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

PUHCA 2005: The Public Utility Holding Company Act of 2005.

Purchased Power Resources: Purchases of energy by DEC or DEP at wholesale from sellers other than each other, the contract terms for which are one year or longer.

Retail Native Load Customers: The captive retail Customers of DEC and DEP in North Carolina for which DEC and DEP have the obligation under North Carolina law to engage in long-term planning and to supply all Electric Services, including installing or contracting for capacity, if needed, to reliably meet their electricity needs.

Retained Earnings: The retained earnings currently required to be listed on page 112, line 11, of the pre-Merger DEC FERC Form 1, the pre-Merger DEP FERC Form 1, and page 112, line 11 of the pre-Merger Piedmont FERC Form 2.

Shared Services: The services that meet the requirements of these Regulatory Conditions and that the Commission has explicitly authorized DEC, DEP, and Piedmont to take from DEBS pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and these Regulatory Conditions.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, LLC (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), Florida Power Corporation, d/b/a Duke Energy Florida, LLC (DEF), and Duke Energy Ohio, Inc. (Duke Ohio).

SECTION II AUTHORITY, SCOPE, AND EFFECT

These Regulatory Conditions are based on the general power and authority granted to the Commission in Chapter 62 of the North Carolina General Statutes to control and supervise the public utilities of the State. The Regulatory Conditions (a) ~~specific address~~ exercises of the Commission's authority, ~~(b) and~~ provide mechanisms that enable the Commission to determine ~~in advance~~ the extent of its authority and jurisdiction over proposed activities of, and transactions involving, DEC, DEP, Piedmont, Duke Energy, other Affiliates or Nonpublic Utility Operations, ~~and (c) protect the Commission's jurisdiction from federal preemption and its effects.~~ The purpose of these Regulatory Conditions is to ensure that DEC's and DEP's Retail Native Load Customers and Piedmont's Customers (a) are protected from any known adverse effects from the Merger, (b) are protected as much as possible from potential costs and risks resulting from the Merger, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Merger. These Regulatory Conditions are not intended to impose legal obligations on entities in which Duke Energy does not directly or indirectly have a controlling voting interest, or to affect any rights of any party to participate in subsequent proceedings.

2.1 ~~Waiver of Certain Federal Rights. Commission Authority Over Certain Transactions.~~ Pursuant to these conditions, DEC, DEP, Piedmont, Duke Energy, and other Affiliates ~~acknowledge that the Commission has authority over intra-company transactions waive certain of their federal rights as specified in these Regulatory Conditions, but do not otherwise agree that the Commission has authority other than~~ as provided for in Chapter 62.

2.2 Limited Right to Challenge Commission Orders. Other than as provided for, or explicitly prohibited, in these conditions, Duke Energy, DEC, DEP, Piedmont, and other Affiliates retain the right to challenge the lawfulness of any Commission order issued pursuant to or relating to these Regulatory Conditions on the basis that such order exceeds the Commission's statutory authority under North Carolina law or the other grounds listed in G.S. 62-94(b).

2.3 Waiver Request. DEC, DEP, Piedmont, Duke Energy, and other Affiliates may seek a waiver of any aspect of these Regulatory Conditions in a particular case or circumstance for good cause shown by filing a such request with the Commission.

SECTION III PROTECTION FROM PREEMPTION

The following Regulatory Conditions are intended to protect the jurisdiction of the Commission ~~against the risk of federal preemption~~ as a result of the Merger, including risks related to agreements and transactions between and among DEC, DEP, Piedmont, and any of their Affiliates; financing transactions involving Duke Energy, DEC, DEP, or Piedmont, and any other Affiliate; and the ownership, use,

and disposition of assets by DEC, DEP, or Piedmont. ~~_; participation in the wholesale market by DEC or DEP; and filings with federal regulatory agencies.~~

3.1 Transactions between DEC, DEP, Piedmont, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts ~~to be Filed with the FERC~~; Annual Certification.

~~(a)~~ DEC, DEP, and Piedmont shall not engage in any transactions with Affiliates or proposed Affiliates without first filing the proposed contracts or agreements memorializing such transactions pursuant to G.S. 62-153 and taking such actions and obtaining from the Commission such determinations and authorizations as may be required under North Carolina law. DEC, DEP, or Piedmont, as applicable, shall submit each proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract to the Public Staff for informal review at least 15 days before filing it with the Commission. If DEC, DEP, or Piedmont and the Public Staff agree within the 15-day period that the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract does not require any action by the Commission, DEC, DEP, or Piedmont may proceed to execute the agreement subject to later disapproval and voidance by the Commission pursuant to G.S. 62-153(a). Otherwise, the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract shall not be executed until the agreement has been filed and payment of compensation has been approved by the Commission pursuant to G.S. 62-153(b). ~~No formal advance notice pursuant to Regulatory Condition 13.2 is required for such agreements unless the agreements are to be filed with the FERC, in which case subsection (c) applies.~~

~~(b)~~ All Affiliate Contracts to which DEC, DEP, or Piedmont is a party shall contain the following provisions:

~~DEC's, DEP's, or Piedmont's participation in the agreement is voluntary, DEC, DEP, or Piedmont is not obligated to take or provide services or make any purchases or sales pursuant the agreement, and DEC, DEP, or Piedmont may elect to discontinue its participation in the agreement at its election after giving any required notice;~~

~~DEC, DEP, or Piedmont may not make or incur a charge under the agreement except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder;~~

~~DEC, DEP, or Piedmont may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the Commission or (B) revenue level earned under the agreement less than the amount imputed by the Commission; and~~

~~(iv) DEC, DEP, or Piedmont shall not assert in any forum — whether judicial, administrative, federal, state, local or otherwise — either on its own initiative or in support of another entity's assertions, that the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by Federal Law or (B) not within the Commission's power, authority or jurisdiction; DEC, DEP, and Piedmont will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.~~

~~(c)~~

3.2 Financing Transactions Involving DEC, DEP, Piedmont, Duke Energy, or Other Affiliates.

- (a) With respect to any financing transaction between or among DEC, DEP, or Piedmont and Duke Energy or any one or more other Affiliates, any contract memorializing such transaction shall expressly provide that DEC, DEP, or Piedmont shall not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder; and
- (b) With respect to any financing transaction (i) between or among any of the Affiliates if such contracts are reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, or (ii) between or among DEC, DEP, and Piedmont or between DEC, DEP, or Piedmont and any other Affiliate, any contract memorializing such transaction shall expressly provide that DEC, DEP, or Piedmont shall not include the effects of any capital structure or debt or equity costs associated with such financing transaction in its North Carolina retail cost of service or rates except as allowed by the Commission.

3.3 Ownership and Control of Assets Used by DEC, DEP, and Piedmont to Supply Electric Power or Natural Gas Services to North Carolina Customers; Transfer of Ownership or Control.

- (a) DEC, DEP, and Piedmont shall own and control all assets or portions of assets used for the generation, transmission, and distribution of electric power or the transmission, storage, or distribution of natural gas to their respective Customers (with the exception of assets solely used to provide power purchased by DEC or DEP at wholesale).
- (b) With respect to the transfer by DEC, DEP, or Piedmont to any entity, affiliated or not, of the control of, operational responsibility for, or ownership of generation, transmission, or distribution assets with a gross book value in excess of ten million dollars (\$10 million), DEC,

DEC, or Piedmont shall provide written notice to the Commission at least 30 days in advance of the proposed transfer. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

- (c) Any contract memorializing such a transfer shall include the following language:
 - (i) DEC, DEP, or Piedmont may not commit to or carry out the transfer except in accordance with applicable law, and the rules, regulations and orders of the Commission promulgated thereunder; and
 - (ii) DEC, DEP, or Piedmont may not include in its North Carolina cost of service or rates the value of the transfer, ~~whether or not subject to federal law,~~ except as allowed by the Commission in accordance with North Carolina law.
- ~~(d) Any application filed with the FERC in connection with any transfer of control, operational responsibility, or ownership that involves or potentially affects DEC, DEP, or Piedmont shall include the language set forth in subdivisions (c)(i) and (ii), above.~~

3.4 Purchases and Sales of Electricity and Natural Gas between DEC, DEP, Piedmont, and Duke Energy, Other Affiliates, or Nonpublic Utility Operations. Subject to additional restrictions set forth in the Code of Conduct, neither DEC, DEP, nor Piedmont shall purchase electricity (or related ancillary services) or natural gas from Duke Energy, another Affiliate, or a Nonpublic Utility Operation under circumstances where the total all-in costs, including generation, transmission, ancillary costs, distribution, taxes and fees, and delivery point costs, incurred (whether directly or through allocation), based on information known, anticipated, or reasonably available at the time of purchase, exceed fair Market Value for comparable service, nor shall DEC, DEP, or Piedmont sell electricity (or related ancillary services) or natural gas to Duke Energy, another Affiliate, or a Nonpublic Utility Operation for less than fair Market Value; provided, however, that such restrictions shall not apply to emergency transactions. This condition shall not apply to transactions between DEC and DEP that are governed by the JDA.

3.5 Least Cost Integrated Resource Planning and Resource Adequacy. This Regulatory Condition does not apply to Piedmont. DEC and DEP shall retain the obligation to pursue least cost integrated resource planning for their respective Retail Native Load Customers and remain responsible for their own resource adequacy subject to Commission oversight in accordance with North Carolina law. DEC and DEP shall determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to their respective Retail Native Load Customers, including the siting considered appropriate for such

resources, on the basis of the benefits and costs of such siting and resources to those Retail Native Load Customers.

3.6 Priority of Service.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) The planning and joint dispatch of DEC's system generation and Purchased Power Resources shall ensure that DEC's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEC shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.
- (c) The planning and joint dispatch of DEP's system generation and Purchase Power Resources shall ensure that DEP's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEP shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

3.7 Wholesale Power Contracts Granting Native Load Priority.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) DEC is not required to ~~file an advance notice with~~ notify the Commission ~~or receive its approval prior to when it enters~~ entering into wholesale power contracts that grant Native Load Priority to the following historically served customers: the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Dallas, North Carolina; the Town of Forest City, North Carolina; Lockhart Power Company; the Public Works Commission of the Town of Due West, South Carolina; the Town of Prosperity, South Carolina; the City of Greenwood, South Carolina; the Town of Highlands; North Carolina; Western Carolina University (WCU); the electric membership cooperatives (EMCs) within DEC's control area; North Carolina Municipal Power Agency No. 1; Piedmont Municipal Power Agency; New River Light & Power Company; and the South Carolina distribution cooperatives historically served by Saluda River Electric Cooperative, Inc., and currently served by Central Electric Power Cooperative, Inc.

(which are Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative Inc., Laurens Electric Cooperative, Inc., Little River Electric Cooperative, Inc., and York Electric Cooperative, Inc.). Subject to the conditions set out in Regulatory Condition 3.8, the retail native loads of these historically served wholesale customers shall be considered DEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5; provided, however, that this subsection applies only to the same types of supplemental load and backstand requirements services that were historically provided to the Catawba Joint Owners under the Catawba Interconnection Agreements between DEC and the Catawba Joint Owners prior to 2001, which, for the North Carolina Electric Membership Corporation, only includes the EMCs within DEC's control area.

- (c) DEP is not required to ~~file an advance notice with~~ notify the Commission ~~or receive its approval prior to entering when it enters~~ into wholesale power contracts that grant Native Load Priority to the Public Works Commission of the City of Fayetteville, North Carolina; the Town of Waynesville, North Carolina; the City of Camden, South Carolina; the French Broad Electric Membership Corporation; the North Carolina Eastern Municipal Power Agency; the electric membership cooperatives (EMCs) within DEP's control area, whether served through the North Carolina Electric Membership Corporation (NCEMC) or individually; the Town of Black Creek, North Carolina; the Town of Lucama, North Carolina; the Town of Stantonsburg, North Carolina; the Town of Sharpsburg, North Carolina; and the Town of Winterville, North Carolina. Subject to the conditions set out in Regulatory Condition 3.8, the retail native loads of these historically served wholesale customers shall be considered DEP's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.

- ~~(d) Before either DEC or DEP executes any contract that grants Native Load Priority to a wholesale customer (other than as set forth in subdivisions (a) and (b) above) or to one or more retail customers of another entity, it must provide the Commission with at least 30 days' written advance notice of its intent to grant Native Load Priority and to treat the retail native load of a proposed wholesale customer as if it were DEC's or DEP's retail native load pursuant to Regulatory Conditions 3.5, 3.6, and 4.5. The provisions set forth in Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.~~

3.8 Additional Provisions Regarding Wholesale Contracts Entered into by DEC or DEP as Sellers.

- (a) This Regulatory Condition does not apply to Piedmont.

(b) The Commission retains the right to assign, allocate, impute, and make pro-forma adjustments with respect to the revenues and costs ~~associated with both DEC's or DEP's wholesale contracts~~ for retail ratemaking and regulatory accounting and reporting purposes.

~~(c) DEC and DEP acknowledge that when either DEC or DEP enters Entry into wholesale contracts that grant Native Load Priority or otherwise obligate DEC or DEP to construct generating facilities or make commitments to purchase capacity and energy to meet those contractual commitments, such action constitutes acceptance by DEC, DEP, Duke Energy, and other Affiliates or Nonpublic Utility Operations thereof of the risks that investments in generating facilities or commitments to purchase capacity and energy to meet such contractual commitments and maintain an adequate reserve margin throughout the term of such contracts may become uneconomic sunk costs that are not may not be recoverable from DEC's or DEP's respective Retail Native Load Customers. In a future Commission retail proceeding in which cost recovery is at issue, neither DEC nor DEP shall claim that it does not bear this risk. __, and both DEC and DEP shall acknowledge that the Commission retains full authority under Chapter 62 to disallow such costs as not used and useful and to allocate, impute, or assign such costs away from Retail Native Load Customers. For purposes of this condition, capacity will be considered used and useful and not excess capacity to the extent the Commission determines such capacity is needed by DEC or DEP to meet the expected peak loads of DEC's or DEP's respective Retail Native Load Customers in the near term future plus a reserve margin comparable to that currently being used or otherwise considered appropriate by the Commission. Neither DEC, DEP, Duke Energy, nor any other Affiliate shall assert in any forum—whether judicial, administrative, federal, state, local or otherwise—either on its own initiative or in support of any other entity's assertions that the Commission is preempted from taking the actions contemplated in this subsection.~~

~~(d)~~

~~(e) Neither DEC, nor DEP, nor Duke Energy, nor other Affiliate shall assert in any forum—whether judicial, administrative, federal, state, local or otherwise—either on its own initiative or in support of any other entity's assertions that (i) transactions entered into pursuant to DEC's or DEP's cost or market-based rate authority or (ii) the filing with, or acceptance for filing by, the FERC of any wholesale power contract to which either is a party establishes or implies a cost allocation methodology that is binding on the Commission, requires the pass-through of any costs or revenues under the filed rate doctrine, or preempts the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow the revenues and costs associated with, DEC's or DEP's~~

~~wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.~~

- ~~(f)–~~
~~(e) Neither DEC, nor DEP, nor Duke Energy, nor other Affiliate shall assert in any forum — whether judicial, administrative, federal, state, local or otherwise — either on its own initiative or in support of any other entity's assertions that the exercise of authority by the Commission to assign, allocate, impute, make pro-forma adjustments to, or disallow the costs and revenues associated with DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes in itself constitutes an undue burden on interstate commerce or otherwise violates the Commerce Clause of the United States Constitution. DEC and DEP, however, retain the right to argue that a specific exercise of authority by the Commission violates the Commerce Clause based upon specific evidence of undue interference with interstate commerce.~~

- (cf) Except as provided in the foregoing conditions, DEC and DEP retain the right to challenge the lawfulness of any order issued by the Commission in connection with the assignment, allocation, imputation, pro-forma adjustments to, or disallowances of the revenues and costs associated with DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes on any other grounds, including but not limited to the right outlined in G.S. 62-94(b).

3.9 Other Protections.

- (a) DEC, DEP, Piedmont, Duke Energy, another Affiliate, and a Nonpublic Utility Operation shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise — ~~either on its own initiative or in support of any other entity's assertions that approval by the FERC of market-based rates, transfers of generating facilities, or any matter that involves Affiliates in any way preempts~~ limits the Commission's authority to determine the reasonableness or prudence of DEC's, DEP's, or Piedmont's decisions with respect to supply-side resources, demand-side management, or any other aspect of resource adequacy.
- (b) No agreement shall be entered into ~~_, nor shall any filing be made with the FERC,~~ by or on behalf of DEC or DEP, that (i) commits DEC or DEP to, or involves either of them in, joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other or with one or more other Affiliates, or (ii) otherwise alters DEC's or DEP's obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission.

- (c) DEC, DEP, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall file notice with the Commission ~~at least 30 days prior to filing with the FERC of~~ any agreement, tariff, or other document or any proposed amendments, modifications, or supplements to any such document that has the potential to (i) affect DEC's or DEP's retail cost of service for system power supply resources or transmission system; (ii) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (iii) be interpreted as involving DEC or DEP in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one or more Affiliates; or (iv) otherwise have an Effect on DEC's or DEP's Rates or Service. ~~The provisions set forth in Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition; provided, however, that, to the extent the filing with the FERC is not to be made by DEC or DEP, the advance notice procedures shall be for the purpose of a determination by the Commission as to whether the filing is reasonably likely to have an Effect on DEC's or DEP's Rates or Service.~~
- (d) Any contract or filing regarding DEC's or DEP's membership in or withdrawal from an RTO or comparable entity must be contingent upon state regulatory approval. This Regulatory Condition does not apply to Piedmont.
- (e) DEC, DEP, and Piedmont shall obtain Commission approval before DEBS is sold, transferred, merged with any other entities, has any ownership interest therein changed, or otherwise changed so that a change of control could occur. This requirement does not apply to any movement of DEBS within the Duke Energy holding company system that does not constitute a change of control.
- (f) DEC, DEP, and Piedmont may participate in joint comments and other joint filings with Affiliates only when such participation fully complies with both the letter and the spirit of the Regulatory Conditions. Any filing made by DEBS on behalf of DEC, DEP, or Piedmont must clearly identify DEBS as an agent of DEC, DEP, or Piedmont for purposes of making the filing.
- (g) Neither DEC, DEP, Piedmont, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation shall make any assertion or argument either on its own initiative or in support of any other entity's assertions in any forum – whether judicial, administrative, federal, state, or otherwise – with respect to any contract, transaction, or other matter in which DEC, DEP, or Piedmont is involved or proposes to be involved or any contract, transaction, or matter involving or proposed to involve Duke Energy, any other Affiliate, or any Nonpublic Utility Operation that may have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, that

any of the following actions ~~by the Commission are preempted, in whole or in part, by Federal Law or~~ exceed the Commission's power, authority or jurisdiction under North Carolina law:

- (i) reviewing the reasonableness of any Affiliate commitment entered into or proposed to be entered into by DEC, DEP, or Piedmont, or disallowing the costs of, or imputing revenues related to such commitment to, DEC, DEP, or Piedmont;
- (ii) exercising its authority over financings or setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for retail ratemaking purposes;
- (iii) reviewing the reasonableness of any commitment entered into or proposed to be entered into by DEC, DEP, or Piedmont to transfer an asset;
- (iv) mandating, approving, or otherwise regulating a transfer of assets;
- (v) scrutinizing and establishing the value of any asset transfers for the purpose of determining the rates for services rendered to DEC's or DEP's Retail Native Load Customers or Piedmont's Customers; or
- (vi) exercising any other lawful authority it may have.

Should any other entity so assert, neither DEC, DEP, Piedmont, Duke Energy, other Affiliates, nor the Nonpublic Utility Operations shall support any such assertion and shall, promptly upon learning of such assertion, advise and consult with the Commission and the Public Staff regarding such assertion.

~~(vii) DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall (A) bear the full risk of any preemptive effects of Federal Law with respect to any contract, transaction, or commitment entered into or made or proposed to be entered into or made by DEC, DEP, or Piedmont, or which may otherwise affect DEC's, DEP's, or Piedmont's operations, service, or rates and (B) shall take all actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases or any other adverse effects of such preemption. Such actions include, but are not limited to, filing with and making reasonable efforts to obtain approval from the~~

~~FERC or other applicable federal entity of such commitments as the Commission deems reasonably necessary to prevent such preemptive effects.~~

3.10 FERC Filings and Orders. In addition to the filing requirements of Commission Rule R8-27 and all other applicable statutes and rules, and to keep the Commission informed of their activities, DEC and DEP shall, on a quarterly basis, file with the Commission the following: (a) a list of all active dockets at the FERC, including a sufficient description to identify the type of proceeding, in which DEC, DEP, Duke Energy, or DEBS is a party, with new information in each quarterly filing tracked; and (b) a list of the periodic reports filed by DEC, DEP, Duke Energy, or DEBS with the FERC, including sufficient information to identify the subject matter of each report and how each report can be accessed. These filings shall be made in Docket Nos. E-7, Sub 1100E, and E-2, Sub 1095E, as appropriate, and updated regularly. In addition, DEC and DEP shall serve on the Public Staff all filed cost-based and market-based wholesale agreements and amendments; all filings related to their Joint Open Access Transmission Tariff; interconnection agreements and amendments; and any other filings made with the FERC, to the extent these other filings are reasonably likely to have an Effect on DEC's or DEP's Rates or Service. This Regulatory Condition does not apply to Piedmont, as relevant FERC-related information is required to be filed with the Commission in annual gas cost prudence reviews.

SECTION IV JOINT DISPATCH

The Regulatory Conditions in Section IV do not apply to Piedmont. They are intended to prevent the jurisdiction and authority of the Commission from being preempted as a result of the JDA, to ensure that DEC's and DEP's Retail Native Load Customers receive adequate benefits from the JDA, and to ensure that both joint dispatch costs and the sharing of cost savings can be appropriately audited. The Regulatory Conditions set forth in Section III and the Regulatory Conditions in Section V to the extent they are relevant to Affiliate Contracts also apply to the JDA.

4.1 Conditional Approval and Notification Requirement. DEC and DEP acknowledge that the Commission's approval of the merger between Duke Energy and Progress Energy, and the transfer of dispatch control from DEP to DEC for purposes of implementing the JDA and any successor document is conditioned upon the JDA or successor document never being interpreted as providing for or requiring: (a) a single integrated electric system, (b) a single BAA, control area or transmission system, (c) joint planning or joint development of generation or transmission, (d) DEC or DEP to construct generation or transmission facilities for the benefit of the other, (e) the transfer of any rights to generation or transmission facilities from DEC or DEP to the other, or (f) any equalization of DEC's and DEP's production costs or rates. If, at any time, DEC, DEP or any other Affiliate learns that any of the foregoing interpretations are being considered, in whatever forum, they shall

promptly notify and consult with the Commission and the Public Staff regarding appropriate action.

4.2 Advance Notice Required. To the extent that DEC and DEP desire to engage in any of items (a) through (f) listed in Regulatory Condition 4.1, above, DEC and DEP shall file advance notice with the Commission at least 30 days prior to taking any action to amend the JDA or a successor document or to enter into a separate agreement. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

4.3 Function in DEC or DEP. The joint dispatch function, as provided in the JDA or in a successor document, shall be performed by employees of either DEC or DEP.

4.4 No Limitation on Obligations. DEC and DEP acknowledge that nothing in the JDA or any successor document is intended to alter DEC's and DEP's public utility obligations under North Carolina law or to provide for joint dispatch in a fashion that is inconsistent with those obligations, including, without limitation, the following: (a) DEC's obligation to plan for and provide least cost electric service to its Retail Native Load Customers and DEP's obligation to plan for and provide least cost electric service to its Retail Native Load Customers; (b) DEC's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales; and (c) DEP's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales.

4.5 Protection of Retail Native Load Customers. All joint dispatch and other activities pursuant to the JDA or successor document shall be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and DEP's respective service obligations to their Retail Native Load Customers, (b) fulfill each utility's obligation to serve its own Retail Native Load Customers with its lowest cost generation; and (c) minimize the total costs incurred by DEC and DEP to fulfill their respective obligations to their Retail Native Load Customers. In no event shall any Non-Native Load Sales be made if, based upon information known, anticipated, or reasonably available at the time a sale is made, any such sale results in higher fuel and fuel-related costs or non-fuel O&M costs, on a replacement cost basis, than would otherwise have been incurred unless the revenues credited from each such sale more than offset the higher costs.

4.6 Treatment of Costs and Savings. DEC's and DEP's respective fuel and fuel-related costs and non-fuel O&M costs, and the treatment of savings for retail ratemaking purposes, shall be calculated as provided in the JDA, unless explicitly changed by order of the Commission.

4.7 Required Records. DEC and DEP shall keep records related to the JDA or any successor document as prescribed by the Commission and in such detail as

may be necessary to enable the Commission and the Public Staff to audit both the actual joint dispatch costs and the sharing of cost savings.

4.8 Auditing of Negative Margins. DEC and DEP also shall keep records that provide such detail as may be necessary to enable the Commission and the Public Staff to audit the circumstances that cause any negative margin on a Non-Native Load Sale or a negative transfer payment made pursuant to Section 7.5(a)(ii) of the JDA.

4.9 Protection of Commission's Authority. Neither DEC, DEP, nor any Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that any aspect of the JDA or successor document is intended to diminish or alter the jurisdiction or authority of the Commission over DEC or DEP, including, among other things, the jurisdiction and authority of the Commission to do the following: (a) establish the retail rates on a bundled basis for DEC or DEP, (b) to impose regulatory accounting and reporting requirements, (c) impose service quality standards, (d) require DEC and DEP to engage separately in least cost integrated resource planning, and (e) issue certificates of public convenience and necessity for new generating and transmission resources.

4.10 Preventive Action Required. DEC, DEP, Duke Energy, and other Affiliates shall take all necessary actions to prevent the generating facilities owned or controlled by DEC or DEP from being considered by the FERC to be (a) part, or all, of a power pool, (b) sufficiently integrated to be one integrated system, or (c) otherwise fully subject to the FERC's jurisdiction, as the result of DEC's and DEP's participation in the JDA or any successor document.

4.11 Modification and Termination. DEC and DEP shall modify or terminate the JDA if at any time following consummation of the Merger the Commission finds, after notice and opportunity to be heard, that the JDA does not produce overall cost savings for, or is otherwise not in the best interests of, the North Carolina ratepayers of both DEC and DEP.

4.12 Hold Harmless Commitment. DEC and DEP shall take all actions as may be reasonably appropriate and necessary to hold North Carolina retail ratepayers harmless from any adverse rate impacts related to the JDA, including any trapped costs resulting from actions taken or required by the FERC with respect to the JDA.

SECTION V

TREATMENT OF AFFILIATE COSTS AND RATEMAKING

The following Regulatory Conditions are intended to ensure that the costs incurred by DEC, DEP, and Piedmont are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations and that only costs that produce benefits for DEC's and DEP's

respective Retail Native Load Customers and Piedmont's Customers are included in DEC's, DEP's, and Piedmont's North Carolina cost of service for ratemaking purposes. The procedures set forth in Regulatory Condition 13.2 do not apply to an advance notice filed pursuant to this section.

5.1 Access to Books and Records. In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations.

5.2 Procurement or Provision of Goods and Services by DEC, DEP, or Piedmont from or to Affiliates or Nonpublic Utility Operations. Except as to transactions between and among DEC, DEP, and Piedmont pursuant to filed and approved service agreements and lists of services, and subject to additional provisions set forth in the Code of Conduct, DEC, DEP, and Piedmont shall take the following actions in connection with procuring goods and services for their respective utility operations from Affiliates or Nonpublic Utility Operations and providing goods and services to Affiliates or Nonpublic Utility Operations:

- (a) DEC, DEP, and Piedmont each shall seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services, and shall have the burden of proving that any and all goods and services procured from their Utility Affiliates, Non-Utility Affiliates, and Nonpublic Utility Operations have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-Affiliate sources or that DEC, DEP, or Piedmont could not have provided the services or goods for itself on the same basis at a lower cost. To this end, no less than every four years DEC, DEP, and Piedmont shall perform comprehensive non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from a Utility Affiliate, DEBS, another Non-Utility Affiliate, and a Nonpublic Utility Operation, including periodic testing of services being provided internally or obtained individually through outside providers. To the extent the Commission approves the procurement or provision of goods and services between or among DEC, DEP, Piedmont, and the Utility Affiliates, those goods and services may be provided at the supplier's Fully Distributed Cost.
- (b) To the extent they are allowed to provide such goods and services, DEC, DEP, and Piedmont shall have the burden of proving that all goods and services provided by any one of them to Duke Energy, a Non-Utility Affiliate, any other Affiliate, or a Nonpublic Utility Operation have been provided on the terms and conditions comparable to the most favorable terms and conditions reasonably available in the market, which shall

include a showing that such goods or services have been provided at the higher of cost or market price. To this end, no less than every four years DEC, DEP, and Piedmont shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services provided by either of them to a Utility Affiliate, DEBS, another Non-Utility Affiliate, any other Affiliate, and a Nonpublic Utility Operation.

- (c) The periodic assessments required by subdivisions (a) and (b) of this subsection may take into consideration qualitative as well as quantitative factors. To the extent that comparable goods or services provided to DEC, DEP or Piedmont, or by DEC, DEP or Piedmont are not commercially available, this Regulatory Condition shall not apply.

5.3 Location of Core Utility Functions.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) Core utility functions are those functions related to Electric Services. The employees performing these core utility functions will be DEC or DEP employees and not service company employees of DEBS. Core utility functions do not include services of a governance or corporate type nature that have been traditionally provided by a service company, the specific services listed on the service company agreement services list for DEC and DEP filed with the Commission pursuant to Regulatory Condition 5.4(a), and roles that provide oversight to the enterprise and are not jurisdiction-specific (Excluded Functions).
- (c) All core utility functions employees charging 50% or more of their time to DEC and DEP (separately or combined) should be in the payroll company of either DEC or DEP and not on the payroll of an Affiliate such as DEBS. If it is not readily determinable that a particular function is related to the provision of Electric Services or is an Excluded Function, the appropriate payroll company decision will be governed by whether 50% or more of the affected group or individual employee's time is charged to DEC or DEP.
- (d) DEC and DEP shall annually review core utility function employees charging more than 50% of their time to DEC and DEP (separately or combined) over a six-month period from January 1 to June 30. If DEC and DEP determine that an employee performing a core utility function is direct charging 50% or more of his or her time to DEC or DEP, that employee should be transferred to DEC or DEP (if not already on the DEC or DEP payroll). Conversely, if a DEC or DEP employee is charging less than 50% of his or her time to DEC or DEP (separately or combined), and the employee is not otherwise charging the larger portion of their time to DEC or DEP, that employee should not be on the payroll of DEC or DEP.
- (e) DEC and DEP shall annually file, at least 90 days prior to January 1, a report containing the results of the annual review and advance notice of any transfers from DEC to DEP to another entity based on direct charging results (Employee Payroll Transfer Report). New organizations and reorganizations will be reflected in the Employee Payroll Transfer Reports.
- (f) If an employee transfer from DEC or DEP occurs during the middle of the year, and that transfer involves the transfer of a core utility function to the service company, the provisions of Regulatory Condition 10.1 will apply.
- (g) DEC and DEP may file a list of employees at the higher levels of management (not including those levels of management that report

directly to the Chief Executive Officer for Duke Energy) for their core utility functions that they propose to be DEBS employees in their annual filing.

5.4 Service Agreements and Lists of Services.

- (a) DEC, DEP, and Piedmont shall file pursuant to G.S. 62-153 final proposed service agreements that authorize the provision and receipt of non-power goods or services between and among DEC, DEP, Piedmont, their Affiliates or Nonpublic Utility Operations, the list(s) of goods and services that DEC, DEP, and Piedmont each intend to take from DEBS, the list(s) of goods and services DEC, DEP, and Piedmont intend to take from each other and the Utility Affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists that involve payment of fees or other compensation by DEC, DEP, or Piedmont shall require acceptance and authorization by the Commission, and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) DEC, DEP, and Piedmont shall take goods and services from an Affiliate only in accordance with the filed service agreements and approved list(s) of services. DEC, DEP, and Piedmont shall file notice with the Commission in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-6, Sub 682A, respectively, at least 15 days prior to making any proposed changes to the service agreements or to the lists of services.

5.5 Charges for and Allocations of the Costs of Affiliate Transactions. To the maximum extent practicable, all costs of Affiliate transactions shall be directly charged. When not practicable, such costs shall be assigned in proportion to the direct charges. If such costs are of a nature that direct charging and direct assignment are not practicable, they shall be allocated in accordance with Commission-approved allocation methods. The following additional provisions shall apply:

- (a) DEC, DEP, and Piedmont shall keep on file with the Commission a cost allocation manual (CAM) with respect to goods or services provided by DEC, DEP, or Piedmont, any Utility Affiliate, DEBS, any other Non-Utility Affiliate, Duke Energy, any other Affiliates, or any Nonpublic Utility Operation to DEC, DEP, or Piedmont. Piedmont will adopt DEC's and DEP's CAM.
- (b) The CAM shall describe how all directly charged, direct assignment, and other costs for each provider of goods and services will be charged between and among DEC, DEP, Piedmont, their Utility Affiliates, Non-Utility Affiliates, Duke Energy, any other Affiliates, and the Nonpublic Utility Operations, and shall include a detailed review of the common costs to be allocated and the allocation factors to be used.

- (c) The CAM shall be updated annually, and the revised CAM shall be filed with the Commission no later than March 31 of the year that the CAM is to be in effect. DEC, DEP, and Piedmont shall review the appropriateness of the allocation bases every two years, and the results of such review shall be filed with the Commission. Interim changes shall be made to the CAM, if and when necessary, and shall be filed with the Commission, in accordance with Regulatory Condition 5.6.
- (d) No changes shall be made to the procedures for direct charging, direct assigning, or allocating the costs of Affiliate transactions or to the method of accounting for such transactions associated with goods and services (including Shared Services provided by DEBS) provided to or by Duke Energy, other Affiliates, and the Nonpublic Utility Operations until DEC, DEP, or Piedmont has given 15 days' notice to the Commission of the proposed changes, in accordance with Regulatory Condition 5.6.

5.6 Procedures Regarding Interim Changes to the CAM or Lists of Goods and Services for which 15 Days' Notice Is Required. With respect to interim changes to the CAM or changes to lists of goods and services, for which the 15 day notice to the Commission is required, the following procedures shall apply: the Public Staff shall file a response and make a recommendation as to how the Commission should proceed before the end of the notice period. If the Commission has not issued an order within 30 days of the end of the notice period, DEC, DEP, or Piedmont may proceed with the changes but shall be subject to any fully adjudicated Commission order on the matter. The provisions of Regulatory Condition 13.2 do not apply to advance notices filed pursuant to Regulatory Condition 5.5(c) and (d). Such advance notices shall be filed in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-9, Sub 682A.

5.7 Annual Reports of Affiliate Transactions. DEC, DEP, and Piedmont shall file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-9, Sub 682A. The report shall be filed on or before May 30 of each year, for activity through December 31 of the preceding year. DEC, DEP, Piedmont, and other parties may propose changes to the required affiliated transaction reporting requirements and submit them to the Commission for approval, also in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-9, Sub 682A.

5.8 Third-party Independent Audits of Affiliate Transactions.

- (a) No less often than every two years, a third-party independent audit shall be conducted related to the affiliate transactions undertaken pursuant to Affiliate agreements filed in accordance with Regulatory Condition 5.4 and of DEC's, DEP's, and Piedmont's compliance with all conditions approved by the Commission concerning Affiliate transactions, including the

propriety of the transfer pricing of goods and services between or among DEC, DEP, Piedmont, other Affiliates, and all of the Nonpublic Utility Operations.

- (i) The first audit shall begin two years from the date of the close of the Merger. It shall include whether DEC's, DEP's, and Piedmont's transactions, services, and other Affiliate dealings pursuant to the regulated utility-to-regulated utility service agreement and any other utility to utility agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and Piedmont have operated in accordance with those conditions and Code of Conduct.
 - (ii) The second audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the first audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's, DEP's, and Piedmont's transactions, services, and other Affiliate dealings pursuant to the Service Company Utility Service Agreement and other Affiliate transactions other than transactions undertaken pursuant to regulated utility to regulated utility service agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and Piedmont have operated in accordance with those conditions and Code of Conduct.
 - (iii) Thereafter, independent audits shall occur every two years from the date of the Commission's order on the immediately preceding auditor's final report or, if no such order is issued, two years from the date of such final report. The subject matter of these audits shall alternate between the subject matters for the first and second independent audits. DEC, DEP, and Piedmont may request a change in the frequency of the audit reports in future years, subject to approval by the Commission.
- (b) The following further requirements apply:
- (i) The independent auditor shall have sufficient access to the books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and all of the Nonpublic Utility Operations to perform the audits.
 - (ii) For each audit, the Public Staff shall propose one or more independent auditor(s). DEC, DEP, Piedmont, and other parties shall have an opportunity to comment and propose additional auditors. Selection of the independent auditor shall be made by the

Commission. Any party proposing an independent auditor shall file such auditor's audit proposal with the Commission.

- (iii) The independent auditor shall be supervised in its duties by the Public Staff, and the auditor's reports shall be filed with the Commission.

5.9 Ongoing Review by Commission.

- (a) The services rendered by DEC, DEP, and Piedmont to their Affiliates and Nonpublic Utility Operations and the services received by DEC, DEP, or Piedmont from their Affiliates and Nonpublic Utility Operations pursuant to the filed service agreements, the costs and benefits assigned or allocated in connection with such services, and the determination or calculation of the bases and factors utilized to assign or allocate such costs and benefits, as well as DEC's, DEP's, and Piedmont's compliance with the Commission-approved Code of Conduct and all Regulatory Conditions, shall remain subject to ongoing review. These agreements shall be subject to any Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) The service agreements, the CAM(s) and the assignments and allocations of costs pursuant thereto, the biannual allocation factor reviews required by Regulatory Condition 5.5(c), the list(s) and the goods and services provided pursuant thereto, and any changes to these documents shall be subject to ongoing Commission review, and Commission action if appropriate.

5.10 Future Orders. For the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue future orders relating to DEC's, DEP's, or Piedmont's cost of service as the Commission may determine are necessary to ensure that DEC's, DEP's, and Piedmont's operations and transactions with their Affiliates and Nonpublic Utility Operations are consistent with the Regulatory Conditions and Code of Conduct, and with any other applicable decisions of the Commission.

5.11 Review by the FERC. Notwithstanding any of the provisions contained in these Regulatory Conditions, to the extent the allocations adopted by the Commission when compared to the allocations adopted by the other State commissions with ratemaking authority as to a Utility Affiliate of DEC, DEP, or Piedmont result in significant trapped costs related to "non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system," including DEC, DEP, and Piedmont, DEC, DEP, or Piedmont may request pursuant to Section 1275(b) of Subtitle F in Title XII of PUHCA 2005 that the FERC "review and authorize the allocation of the costs for such goods and services to the extent relevant to that

associate company." Such review and authorization shall have whatever effect it is determined to have under the law. The quoted language in this Regulatory Condition is taken directly from Section 1275(b) of Subtitle F in Title XII of PUHCA 2005. The terms "associate company" and "holding company system" are defined in Sections 1262(2) and 1262(9), respectively, of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

5.12 Biannual Review of Certain Transactions by Internal Auditors. Transactions between DEC, DEP, or Piedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations, transactions between or among DEC, DEP, and Piedmont, and other transactions between or among Affiliates if such transactions are reasonably likely to have a significant Effect on DEC's, DEP's, or Piedmont's Rates or Service, shall be reviewed at least biannually by Duke Energy's internal auditors. To the extent external audits of the transactions are conducted, DEC, DEP, and Piedmont shall make available such audits for review by the Public Staff and the Commission. DEC, DEP, and Piedmont also shall make available for review by the Public Staff and the Commission all workpapers relating to internal audits and all other internal audit workpapers, if any, related to affiliate transactions, and shall not oppose Public Staff and Commission requests to review relevant external audit workpapers. The requirement to make internal audit workpapers available for review is subject to the assertion of the attorney-client privilege by attorneys for DEC, DEP, and Piedmont. Any dispute as to whether the privilege applies in a particular instance shall be resolved by the Commission in accordance with its regulations and North Carolina law, including the rules of the North Carolina State Bar.

5.13 Notice of Service Company and Non-Utility Affiliates FERC Audits. At such time as DEC, DEP, Piedmont, Duke Energy, or DEBS receives notice from the FERC related to an audit of any Affiliate of DEC, DEP, or Piedmont, DEC, DEP, or Piedmont shall promptly file a notice the Commission that such an audit will be commencing. Any initial report of the FERC's audit team shall be provided to the Public Staff, and any final report shall be filed with the Commission in Docket Nos. E-7, Sub 1100E, E-2, Sub 1095E, and G-9, Sub 682E, respectively.

5.14 Acquisition Adjustment. Any acquisition adjustment that results from the Merger shall be excluded from DEC's, DEP's, and Piedmont's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes so that it does not affect DEC's or DEP's North Carolina retail rates and charges for Electric Services or Piedmont's North Carolina rates and charges for Natural Gas Services.

5.15 Non-Consummation of Merger. If the Merger is not consummated, neither the cost, nor the receipt, of any termination payment between Duke Energy and Piedmont shall be allocated to DEC, DEP, or Piedmont or recorded on their books. DEC's, DEP's, or Piedmont's Customers shall not otherwise bear any direct expenses or costs associated with a failed merger.

5.16 Protection from Commitments to Wholesale Customers.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) For North Carolina retail electric cost of service/ratemaking purposes, DEC's and DEP's respective electric system costs shall be assigned or allocated between and among retail and wholesale jurisdictions based on reasonable and appropriate cost causation principles. For cost of service/ratemaking purposes, North Carolina retail ratepayers shall be held harmless from any cost assignment or allocation of costs resulting from agreements between DEC and the Catawba Joint Owners, and between either DEC or DEP and any of their wholesale customers.
- (c) To the extent commitments to DEC's or DEP's wholesale customers relating to the 2012 merger of Duke Energy and Progress Energy are made by or imposed upon DEC or DEP, the effects of which (i) decrease the bulk power revenues that are assigned or allocated to DEC's or DEP's North Carolina retail operations or credited to DEC's or DEP's jurisdictional fuel expenses, (ii) increase DEC's or DEP's North Carolina retail cost of service, or (iii) increase DEC's or DEP's North Carolina retail fuel costs under reasonable cost assignment and allocation practices approved or allowed by the Commission, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes.
- (d) To the extent that commitments are made by or imposed upon DEC, DEP, Duke Energy, another Affiliate, or a Nonpublic Utility Operation relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service or North Carolina retail fuel costs under reasonable cost allocation practices, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

5.17 Joint Owner-Specific Issues. Assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected by the manner and amount of recovery of electric system costs from the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners. This Regulatory Condition does not apply to Piedmont.

5.18 Inclusion of Cost Savings in Future Rate Proceedings. Neither DEC, DEP, Piedmont, Duke Energy, any other Affiliate, nor a Nonpublic Utility Operation shall assert that any interested party is prohibited from seeking the inclusion in future rate proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC, DEP, and Piedmont.

5.19 Reporting of Costs to Achieve. The North Carolina portion of costs to achieve any business combination transaction savings shall be reflected in DEC's and DEP's North Carolina ES-1 Reports and Piedmont's North Carolina GS-1 Report, as recorded on their books and records under generally accepted accounting principles. DEC, DEP, and Piedmont shall include as a footnote in their ES-1 and GS-1 Reports, as applicable, the Merger-related costs to achieve that were expensed during the relevant period.

5.20 Accounting for Costs to Achieve Related to Historical Events Involving DEP. All costs of Carolina Power and Light Company's merger with North Carolina Natural Gas Company, the Formation of Progress Energy, and Progress Energy's merger with Florida Progress Corporation shall be excluded from DEP's utility accounts, and all direct or indirect corporate cost increases, if any, attributable to those three events shall be excluded from utility costs for all purposes that affect DEP's regulated retail rates and charges. For purposes of this condition, the term "corporate cost increases" means costs in excess of the level DEP would have (a) incurred using prudent business judgment, or (b) had allocated to it, had these transactions not occurred. "Corporate cost increases" also includes any payments made under change-of-control agreements, salary continuation agreements, and other severance- or personnel-type arrangements that are reasonably attributable to these transactions. This Regulatory Condition does not apply to DEC and Piedmont.

5.21 Liabilities of Cinergy Corp. and Florida Progress Corporation.

- (a) DEC's and DEP's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all liabilities of Cinergy Corp. and its subsidiaries, including those incurred prior to and after Duke Energy's acquisition of Cinergy Corp. in 2006. These liabilities include, but are not limited to, those associated with the following: (i) manufactured gas plant sites, (ii) asbestos claims, (iii) environmental compliance, (iv) pensions and other employee benefits, (v) decommissioning costs, and (vi) taxes.
- (b) DEC's and DEP's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress Energy's acquisition of Florida Progress Corporation in 2000. These liabilities include, but are not limited to, those associated with the following: (i) any outages at and repairs of Crystal River 3, (ii) manufactured gas plant sites, (iii) asbestos claims, (iv) environmental compliance, (v) pensions and other employee benefits, (vi) decommissioning costs, and (vii) taxes.
- (c) DEC's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all current and prospective liabilities of DEP, and DEP's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all current and prospective liabilities of DEC.

5.22 Hold Harmless Commitment. DEC, DEP, Piedmont, Duke Energy, the other Affiliates, and all of the Nonpublic Utility Operations shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina Customers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting Customers.

5.23 Cost of Service Manuals. Within six months after the closing date of the Merger, DEC and DEP shall each file with the Commission revisions to its electric cost of service manual to reflect any changes to the cost of service determination process made necessary by the Merger, any subsequent alterations in the organizational structure of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations, or other circumstances that necessitate such changes. These filings shall be made in Docket Nos. E-7, Sub 1100A, and E-2, Sub 1095A, respectively. This Regulatory Condition does not apply to Piedmont.

5.24 Direct Charging and Positive Time Reporting for Piedmont. For purposes of distributing the costs of services provided between and among Affiliates, Piedmont will use direct charging and positive time reporting to at least the same extent as DEC and DEP.

5.25 Piedmont Corporate Cost Allocations Among State Jurisdictions. Piedmont will notify the Commission and Public Staff of any plans to modify its corporate cost allocation procedures at least 90 days prior to implementation of the change.

5.26 Allocation of Fully-distributed Costs to Piedmont's Nonpublic Utility Operations. Piedmont shall direct charge or allocate fully distributed costs to its Nonpublic Utility Operations. The fully distributed costs shall include an overhead component for the cost of shared services provided to these non-regulated businesses and equity investments by Piedmont corporate, DEC, DEP, and DEBS employees.

SECTION VI CODE OF CONDUCT

These Regulatory Conditions include a Code of Conduct in Appendix A. The Code of Conduct governs the relationships, activities and transactions between or among the public utility operations of DEC, DEP, Piedmont, Duke Energy, the Affiliates of DEC, DEP, and Piedmont, and the Nonpublic Utility Operations of DEC, DEP, and Piedmont.

6.1 Obligation to Comply with Code of Conduct. DEC, DEP, Piedmont, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall be bound by the terms of the Code of Conduct set forth in Appendix A and as it may subsequently be amended.

SECTION VII FINANCINGS

The following Regulatory Conditions are intended to ensure (a) that DEC's, DEP's, and Piedmont's capital structures and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other Affiliates and (b) that DEC, DEP, and Piedmont have sufficient access to equity and debt capital at a reasonable cost to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their Customers.

These conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, DEP, Piedmont, or Duke Energy. The approval of the Merger by the Commission does not restrict the Commission's right to review, and by order to adjust, DEC's, DEP's, or Piedmont's cost of capital for ratemaking purposes for the effect(s) of the securities-related transactions associated with the Merger.

7.1 Accounting for Equity Investment in Holding Company Subsidiaries. Duke Energy shall maintain its books and records so that any net equity investment in Cinergy Corp. and Progress Energy, their subsidiaries, or their successors, by Duke Energy or any Affiliates can be identified and made available on an ongoing basis. This information shall be provided to the Public Staff upon its request.

7.2 Accounting for Capital Structure Components and Cost Rates. Duke Energy , DEC, DEP, and Piedmont shall keep their respective accounting books and records in a manner that will allow all capital structure components and cost rates of the cost of capital to be identified easily and clearly for each entity on a separate basis. This information shall be provided to the Public Staff upon its request.

7.3 Accounting for Equity Investment in DEC, DEP, and Piedmont. DEC, DEP, and Piedmont shall keep their respective accounting books and records so that the amount of Duke Energy's equity investment in DEC, DEP, and Piedmont can be identified and made available upon request on an ongoing basis. This information shall be provided to the Public Staff upon request.

7.4 Reporting of Capital Contributions. As part of their Commission ES-1 and GS-1 Reports, DEC, DEP, and Piedmont shall include a schedule of any capital contribution(s) received from Duke Energy in the applicable calendar quarter.

7.5 Identification of Long-term Debt Issued by DEC, DEP, or Piedmont. DEC, DEP, and Piedmont shall each identify as clearly as possible long-term debt (of more than one year's duration) that they issue in connection with their regulated utility operations and capital requirements or to replace existing debt.

7.6 Procedures Regarding Proposed Financings.

- (a) For all types of financings for which DEC, DEP, or Piedmont (or their subsidiaries) are the issuers of the respective securities, DEC, DEP, or Piedmont (or their subsidiaries) shall request approval from the Commission to the extent required by G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16. Generally, the format of these filings should be consistent with past practices. A "shelf registration" approach (similar to Docket No. E-7, Sub 727) may be requested.
- (b) For all types of financings by Duke Energy, other than short-term debt as described in G.S. 62-167, the following shall apply:
 - (i) On or before January 15 of each year, Duke Energy shall file with the Commission and serve on the Public Staff an advance confidential plan of all securities issuances that it anticipates to occur during that calendar year. The annual confidential plan shall include a description of all financings that Duke Energy reasonably believes may occur during the applicable calendar year. A description for each financing shall include the best estimates of the following: type of security; estimate of cost rate (e.g., interest rate for debt); amount of proceeds; brief description of the purpose/reason for issue; and amount of proceeds, if any, that may flow to DEC, DEP, or Piedmont.
 - (ii) If at any time material changes to the financing plans included in the filed plan appear likely, Duke Energy shall file a revised 30-day advance confidential plan that specifically addresses such changes with the Commission and serve such notice on the Public Staff.
 - (iii) At the time of the confidential plan filings identified above, Duke Energy shall also file a non-confidential notice that states that a confidential plan has been filed in compliance with this Regulatory Condition 7.6(b).
 - (iv) Duke Energy may proceed with equity issuances upon the filing of the confidential plan. However, actual debt issuances shall not occur until 30 days after the advance confidential plan or revised plans are filed. In the event it is not feasible for Duke Energy to file a revised advance confidential plan for a material change 30 days in advance, such plan shall be filed by a date that allows adequate time for review or a debt issuance shall be delayed to allow such review. Prior to the Commission's action on the confidential plan for the year in which the plan is filed, Duke Energy may issue securities authorized under the previous year's plan to the extent such securities were not issued during the previous year.

- (v) Within 15 days after the filing of an advance confidential plan or revised plan, the Public Staff shall file a confidential report with the Commission with respect to whether any debt issuances require approval pursuant to G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16 and shall recommend that the Commission issue an order deciding how to proceed. Duke Energy shall have seven days in which to respond to the report. If the Commission determines that any debt issuance requires approval, the Commission shall issue an order requiring the filing of an application and no such issuance shall occur until the Commission approves the application. If the Commission determines that no debt issuance requires approval, the Commission shall issue an order so ruling. At the end of the notice period, Duke Energy may proceed with the debt issuance, but shall be subject to any fully adjudicated Commission order on the matter; provided, however, that nothing herein shall affect the applicability of G.S. 62-170 or other similar provision to such securities or obligations.
- (vi) On or before April 15 of each year, Duke Energy shall file with the Commission a report on all financings that were executed for the previous calendar year. The actual reports should include the same information as required above for the advance plans plus the actual issuance costs.
- (c) If a filing with the Securities and Exchange Commission or other federal agency will be made in connection with a securities issuance, the notice shall describe such filing(s) and indicate the approximate date on which it would occur.
- (d) Securities issuances or financings that are associated with a merger, acquisition, or other business combination shall be filed in conjunction with the information requirements and deadlines stated in Regulatory Conditions 9.1 and 9.2, and this Condition 7.6 shall not apply to such securities issuances or financings.

7.7 Money Pool Agreement. Subject to the limitations imposed in Regulatory Condition 8.5, DEC, DEP, and Piedmont may borrow through Duke Energy's "Utility Money Pool Agreement" (Utility MPA), provided as follows: (a) participation in the Utility MPA is limited to the parties to the Utility MPA filed with the Commission on December 1, 2011, in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A, plus Piedmont and with the exception of the Progress Energy Service Company; and (b) the Utility MPA continues to provide that no loans through the Utility MPA will be made to, and no borrowings through the Utility MPA will be made by, Duke Energy, Progress Energy, and Cinergy Corp.

7.8 Borrowing Arrangements. Subject to the limitations imposed in Regulatory Condition 8.5, DEC, DEP, and Piedmont may borrow short-term funds through one or more joint external debt or credit arrangements (a Credit Facility), provided that the following conditions are met:

- (a) No borrowing by DEC, DEP, or Piedmont under a Credit Facility shall exceed one year in duration, absent Commission approval;
- (b) No Credit Facility shall include, as a borrower, any party other than Duke Energy, DEC, DEP, Duke Indiana, Duke Kentucky, DEF, Duke Ohio, and Piedmont; and
- (c) DEC's, DEP's, and Piedmont's participation in any Credit Facility shall in no way cause either of them to guarantee, assume liability for, or provide collateral for any debt or credit other than its own.

7.9 Long-Term Debt Fund Restrictions. DEC, DEP, and Piedmont shall acquire their respective long-term debt funds through the financial markets, and shall neither borrow from, nor lend to, on a long-term basis, Duke Energy or any of the other Affiliates. To the extent that either DEC, DEP, or Piedmont borrows on short-term or long-term bases in the financial markets and is able to obtain a debt rating, its debt shall be rated under its own name.

SECTION VIII CORPORATE GOVERNANCE/RING FENCING

The following Regulatory Conditions are intended to ensure the continued viability of DEC, DEP, and Piedmont and to insulate and protect DEC, DEP, and their Retail Native Load Customers and Piedmont and its Customers from the business and financial risks of Duke Energy and the Affiliates within the Duke Energy holding company system, including the protection of utility assets from liabilities of Affiliates.

8.1 Investment Grade Debt Rating. DEC, DEP, and Piedmont shall manage their respective businesses so as to maintain an investment grade debt rating on all of their rated debt issuances with all of the debt rating agencies on all of their rated debt issuances. If DEC's, DEP's, or Piedmont's debt rating falls to the lowest level still considered investment grade at the time, DEC, DEP, or Piedmont shall file written notice to the Commission and the Public Staff within five (5) days of such change and an explanation as to why the downgrade occurred. Within 45 days of such notice, DEC, DEP, or Piedmont shall provide the Commission and the Public Staff with a specific plan for maintaining and improving its debt rating. The Commission, after notice and hearing, may then take whatever action it deems necessary consistent with North Carolina law to protect the interests of DEC's or DEP's Retail Native Load Customers and Piedmont's Customers in the continuation of adequate and reliable service at just and reasonable rates.

8.2 Protection Against Debt Downgrade. To the extent the cost rates of any of DEC's, DEP's, or Piedmont's long-term debt (more than one year) or short-term debt (one year or less) are or have been adversely affected through a ratings downgrade attributable to the Merger, a replacement cost rate to remove the effect shall be used for all purposes affecting any of DEC's North Carolina retail rates and charges, DEP's North Carolina retail rates and charges, and Piedmont's North Carolina rates and charges. This replacement cost rate shall be applicable to all financings, refundings, and refinancings taking place following the change in ratings. This procedure shall be effective through DEC's, DEP's and Piedmont's next respective general rate cases. As part of DEC's, DEP's and Piedmont's next respective general rate cases, any future procedure relating to a replacement cost calculation will be determined. This Regulatory Condition does not indicate a preference for a specific debt rating or preferred stock rating for DEC, DEP, or Piedmont on current or prospective bases.

8.3 Distributions from DEC, DEP, and Piedmont to Holding Company. DEC, DEP, and Piedmont shall limit cumulative distributions paid to Duke Energy subsequent to the Merger to (a) the amount of Retained Earnings on the day prior to the closure of the Merger, plus (b) any future earnings recorded by DEC, DEP, and Piedmont subsequent to the Merger.

8.4 Debt Ratio Restrictions. To the extent any of Duke Energy's external debt or credit arrangements contain covenants restricting the ratio of debt to total capitalization on a consolidated basis to a maximum percentage of debt, Duke Energy shall ensure that the capital structures of both DEC, DEP, and Piedmont individually meet those restrictions.

8.5 Limitation on Continued Participation in Utility Money Pool Agreement and Other Joint Debt and Credit Arrangements with Affiliates. DEC, DEP, and Piedmont may participate in the Utility MPA and any other authorized joint debt or credit arrangement as provided in Regulatory Conditions 7.7 and 7.8 only to the extent such participation is beneficial to DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers and does not negatively affect DEC's, DEP's, or Piedmont's ability to continue to provide adequate and reliable service at just and reasonable rates.

8.6 Notice of Level of Non-Utility Investment by Holding Company System. In order to enable the Commission to determine whether the cumulative investment by Duke Energy in assets, ventures, or entities other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service so as to warrant Commission action (pursuant to Regulatory Condition 8.8 or other applicable authority) to protect DEC's or DEP's Retail Native Load Customers or Piedmont's Customers, Duke Energy shall notify the Commission within 90 days following the end of any fiscal year for which Duke Energy reports to the Securities and Exchange Commission assets in its operations other than

regulated utilities that are in excess of 22% of its consolidated total assets. The following procedures shall apply to such a notice:

- (a) Any interested party may file comments within 45 days of the filing of Duke Energy's notice.
- (b) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall make a recommendation as to how the Commission should proceed. If the Commission determines that the percentage of total assets invested in Duke Energy's its operations other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service so as to warrant action by the Commission to protect DEC's and DEP's Retail Native Load Customers and Piedmont's Customers, the Commission shall issue an order setting the matter for further consideration. If the Commission determines that the percentage threshold being exceeded does not warrant action by the Commission, the Commission shall issue an order so ruling.

8.7 Notice by Holding Company of Certain Investments. Duke Energy shall file a notice with the Commission subsequent to Board approval and as soon as practicable following any public announcement of any investment in a regulated utility or a non-regulated business that represents five (5) percent or more of Duke Energy's book capitalization.

8.8 Ongoing Review of Effect of Holding Company Structure. The operation of DEC, DEP, and Piedmont under a holding company structure shall continue to be subject to Commission review. To the extent the Commission has authority under North Carolina law, it may order modifications to the structure or operations of Duke Energy, DEBS, another Affiliate, or a Nonpublic Utility Operation, and may take whatever action it deems necessary in the interest of Retail Native Load Customers and Piedmont's Customers to protect the economic viability of DEC, DEP, and Piedmont, including the protection of DEC's, DEP's, and Piedmont's public utility assets from liabilities of Affiliates.

8.9 Investment by DEC, DEP, or Piedmont in Non-regulated Utility Assets and Non-utility Business Ventures. Neither DEC, DEP, nor Piedmont shall invest in a non-regulated utility asset or any non-utility business venture exceeding \$50 million in purchase price or gross book value to DEC, DEP, or Piedmont unless it provides 30 days' advance notice. Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition. Purchases of assets, including land that will be held with a definite plan for future use in providing Electric Services in DEC's or DEP's franchise area or Natural Gas Services in Piedmont's franchise area, shall be excluded from this advance notice requirement.

8.10 Investment by Holding Company in Exempt Wholesale Generators. By April 15 of each year, Duke Energy shall provide to the Commission and the Public Staff a report summarizing Duke Energy's investment in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. Exempt wholesale generator and foreign utility company are defined in Section 1262(6) of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

8.11 Notice by DEC, DEP, or Piedmont of Default or Bankruptcy of Affiliate. If an Affiliate of DEC, DEP, or Piedmont experiences a default on an obligation that is material to Duke Energy or files for bankruptcy, and such bankruptcy is material to Duke Energy, DEC, DEP, or Piedmont shall notify the Commission in advance, if possible, or as soon as possible, but not later than ten days from such event.

8.12 Annual Report on Corporate Governance. No later than March 31 of each year, DEC, DEP, and Piedmont shall file a report including the following:

- (a) A complete, detailed organizational chart (i) identifying DEC, DEP, Piedmont, and each Duke Energy financial reporting segment, and (ii) stating the business purpose of each Duke Energy financial reporting segment. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (b) A list of all Duke Energy financial reporting segment that are considered to constitute non-regulated investments and a statement of each segment's total capitalization and the percentage it represents of Duke Energy's non-regulated investments and total investments. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (c) An assessment of the risks that each unregulated Duke Energy financial reporting segment could pose to DEC, DEP, or Piedmont based upon current business activities of those affiliates and any contemplated significant changes to those activities.
- (d) A description of DEC's, DEP's, Piedmont's and each significant Affiliate's actual capital structure. In addition, describe Duke Energy's, DEC's, DEP's, and Piedmont's respective capital structures and plans for achieving such goals.
- (e) A list of all protective measures (other than those provided for by the Regulatory Conditions adopted in Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and G-9, Sub 682) in effect between DEC, DEP, Piedmont, and any of their Affiliates, and a description of the goal of each measure and how it

achieves that goal, such as mitigation of DEC's, DEP's, and Piedmont's exposure in the event of a bankruptcy proceeding involving any Affiliate(s).

- (f) A list of corporate executive officers and other key personnel that are shared between DEC, DEP, Piedmont, and any Affiliate, along with a description of each person's position(s) with, and duties and responsibilities to each entity.
- (g) A calculation of Duke Energy's total book and market capitalization as of December 31 of the preceding year for common equity, preferred stock, and debt.

SECTION IX FUTURE MERGERS AND ACQUISITIONS

The following Regulatory Conditions are intended to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, DEP, Piedmont, other Affiliates, or the Nonpublic Utility Operations. The advance notice provisions set forth in Regulatory Condition 13.2 do not apply to these conditions.

9.1 Mergers and Acquisitions by or Affecting DEC, DEP, or Piedmont. For any proposed merger, acquisition, or other business combination by DEC, DEP, or Piedmont that would have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, DEC, DEP, or Piedmont shall file in a new Sub docket an application for approval pursuant to G S. 62-111(a) at least 180 days before the proposed closing date for such merger, acquisition, or other business combination.

9.2 Mergers and Acquisitions Believed Not to Have an Effect on DEC's, DEP's, or Piedmont's Rates or Service. For any proposed merger, acquisition, or other business combination that is believed not to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, but which involves Duke Energy, other Affiliates, or the Nonpublic Utility Operations and which has a transaction value exceeding \$1.5 billion, the following shall apply:

- (a) Advance notification shall be filed with the Commission in a new Sub docket by the merging entities at least 90 days prior to the proposed closing date for such proposed merger, acquisition or other business combination. The advance notification is intended to provide the Commission an opportunity to determine whether the proposed merger, acquisition, or other business combination is reasonably likely to affect DEC, DEP, or Piedmont so as to require approval pursuant to G S. 62-111(a). The notification shall contain sufficient information to enable the Commission to make such a determination. If the Commission determines

that such approval is required, the 180-day advance filing requirement in Regulatory Condition 9.1 shall not apply.

- (b) Any interested party may file comments within 45 days of the filing of the advance notification.
- (c) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall recommend that the Commission issue an order deciding how to proceed. If the Commission determines that the merger, acquisition, or other business combination requires approval pursuant to G.S. 62-111(a), the Commission shall issue an order requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination. If the Commission determines that the merger, acquisition, or other business combination does not require approval pursuant to G.S. 62-111(a), the Commission shall issue an order so ruling. At the end of the notice period, if no order has been issued, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the merger, acquisition, or other business combination but shall be subject to any fully-adjudicated Commission order on the matter.

SECTION X STRUCTURE/ORGANIZATION

The following Regulatory Conditions are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, DEP, Piedmont, and other Affiliates, and Nonpublic Utility operations as they may affect Customers.

10.1 Transfer of Services, Functions, Departments, Rights, Assets, or Liabilities. DEC, DEP, and Piedmont shall file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, rights, obligations, assets, or liabilities from DEC, DEP, or Piedmont to DEBS that (a) involves services, functions, departments, rights, obligations, assets, or liabilities other than those of a governance or corporate type nature that traditionally have been provided by a service company or (b) potentially would have a significant effect on DEC's, DEP's, or Piedmont's public utility operations. The provisions of Regulatory Condition 13.2 apply to an advance notice filed pursuant to this Regulatory Condition.

10.2 Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes. Upon request, DEC, DEP, and Piedmont shall meet and consult with, and provide requested relevant data to, the Public Staff regarding plans

for significant changes in DEC's, DEP's, Piedmont's or Duke Energy's organization, structure (including RTO developments), and activities; the expected or potential impact of such changes on Customer rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's or DEP's Retail Native Load Customers or Piedmont's Customers. To the extent that proposed significant changes are planned for the organization, structure, or activities of an Affiliate or Nonpublic Utility Operation and such proposed changes are likely to have an adverse impact on DEC's, DEP's, or Piedmont's Customers, then DEC's, DEP's, and Piedmont's plans and proposals for assuring that those plans do not adversely affect their Customers must be included in these meetings. DEC, DEP, and Piedmont shall inform the Public Staff promptly of any such events and changes.

SECTION XI SERVICE QUALITY

The following Regulatory Conditions are intended to ensure that DEC, DEP, and Piedmont continue to implement and further their commitment to providing superior public utility service by meeting recognized service quality indices and implementing the best practices of each other and their Utility Affiliates, to the extent reasonably practicable.

11.1 Overall Service Quality. Upon consummation of the Merger, DEC, DEP, and Piedmont each shall continue their commitment to providing superior public utility service and shall maintain the overall reliability of Electric Services and Natural Gas Services at levels no less than the overall levels it has achieved in the past decade.

11.2 Best Practices. DEC, DEP, and Piedmont shall make every reasonable effort to incorporate each other's best practices into its own practices to the extent practicable.

11.3 Quarterly Reliability Reports. DEC and DEP shall each provide quarterly service reliability reports to the Public Staff on the following measures: System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI).

11.4 Notice of NERC Audit. This Regulatory Condition does not apply to Piedmont. At such time as either DEC or DEP receives notice that the North American Electric Reliability Corporation (NERC) or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC's or DEP's compliance with mandatory reliability standards, DEC or DEP shall notify the Public Staff.

11.5 Right-of-Way Maintenance Expenditures (DEC and DEP). DEC and DEP shall budget and expend sufficient funds to trim and maintain their lower voltage line rights-of-way and their distribution rights-of-way in a manner consistent with their internal right-of-way clearance practices and Commission Rule R8-26. In addition,

DEC and DEP shall track annually, on a major category basis, departmental or division budget requests, approved budgets and actual expenditures for right-of-way maintenance.

11.6 Right-of-Way Maintenance Expenditures (Piedmont). Piedmont shall budget and expend sufficient funds to maintain its pipeline rights-of-way so as to allow ready access by personnel and vehicles for the purpose of responding to pipeline damage, conducting leak and corrosion surveys, performing maintenance activities, and ensuring system integrity, safety, and reliability.

11.7 Right-of-Way Clearance Practices (DEC and DEP). DEC and DEP shall each provide a copy of their internal right-of-way clearance practices to the Public Staff, and shall promptly notify the Public Staff of any significant changes or modifications to the practices or maintenance schedules.

11.8 Right-of-Way Clearance Practices (Piedmont). Piedmont shall provide a copy of its Operating and Maintenance Manual to the Public Staff and shall promptly notify the Public Staff in writing of any substantive changes to Section 9, "Right-of-Way Management Program."

11.9 Meetings with Public Staff.

- (a) DEC, DEP, and Piedmont shall each meet annually with the Public Staff to discuss service quality initiatives and results, including (i) ways to monitor and improve service quality, (ii) right-of-way maintenance practices, budgets, and actual expenditures, and (iii) plans that could have an effect on customer service, such as changes to call center operations.
- (b) DEC, DEP, and Piedmont shall each meet with the Public Staff at least annually to discuss potential new tariffs, programs, and services that enable its customers to appropriately manage their energy bills based on the varied needs of their customers.

11.10 Customer Access to Service Representatives and Other Services. DEC, DEP, and Piedmont shall continue to have knowledgeable and experienced customer service representatives available 24 hours a day to respond to service outage calls and during normal business hours to handle all types of customer inquiries. DEC, DEP, and Piedmont shall also maintain up-to-date and user-friendly online services and automated telephone service 24 hours a day to perform routine customer interactions and to provide general billing and customer information.

11.11 Customer Surveys. DEC, DEP, and Piedmont shall continue to survey their customers regarding their satisfaction with public utility service and shall incorporate this information into their processes, programs, and services.

SECTION XII TAX MATTERS

The following Regulatory Conditions are intended to ensure that DEC's, DEP's, and Piedmont's North Carolina Customers do not bear any additional tax costs as a result of the Merger and receive an appropriate share of any tax benefits associated with the service company Affiliates.

12.1 Costs under Tax Sharing Agreements. Under any tax sharing agreement, DEC, DEP, and Piedmont shall not seek to recover from North Carolina Customers any tax costs that exceed DEC's, DEP's, or Piedmont's tax liability calculated as if it were a stand-alone, taxable entity for tax purposes.

12.2 Tax Benefits Associated with Service Companies. The appropriate portion of any income tax benefits associated with DEBS shall accrue to the North Carolina retail operations of DEC, DEP, and Piedmont, respectively, for regulatory accounting, reporting, and ratemaking purposes.

SECTION XIII PROCEDURES

The following Regulatory Conditions are intended to apply to all filings made pursuant to these Regulatory Conditions unless otherwise expressly provided by, Commission order, rule, or statute.

13.1 Filings that Do Not Involve Advance Notice. Regulatory Condition filings that are not subject to Regulatory Condition 13.2 shall be made in sub dockets of Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and G-9, Sub 682, as follows:

- (a) Filings related to affiliate matters required by Regulatory Conditions 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition 5.3 shall be made by DEC, DEP, and Piedmont in Subs 1100A, 1095A, and 682A, respectively;
- (b) Filings related to financings required by Regulatory Condition 7.6, and the filings required by Regulatory Conditions 8.6, 8.7, 8.10, 8.11 and 8.12 shall be made by DEC, DEP, and Piedmont in Subs 1100B, 1095B, and 682B, respectively;
- (c) Files related to compliance as required by Regulatory Conditions 3.1(d) and 14.4 and filings required by Sections III.A.2(k), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made by DEC, DEP, and Piedmont in Subs 1100C, 1095C, and 682C, respectively;
- (d) Filings related to the independent audits required by Regulatory Condition 5.8 shall be made in Subs 1100D, 1095D, and 682D, respectively; and

- (e) Filings related to orders and filings with the FERC, as required by Regulatory Condition 3.1(d), 3.10 and 5.13 shall be made by DEC, DEP, and Piedmont in Subs 1100E, 1095E, and 682E, respectively.

13.2 Advance Notice Filings. Advance notices filed pursuant to Regulatory Conditions 3.1(c), 3.3(b), 3.7(c), 3.9(c), 4.2, 5.3, 8.9, and 10.1 shall be assigned a new, separate Sub docket. Such a filing shall identify the condition and notice period involved and state whether other regulatory approvals are required and shall be in the format of a pleading, with a caption, a title, allegations of the activities to be undertaken, and a verification. Advance notices may be filed under seal if necessary. The following additional procedures apply:

- (a) Advance notices of activities to be undertaken shall not be filed until sufficient details have been decided upon to allow for meaningful discovery as to the proposed activities.
- (b) The Chief Clerk shall distribute a copy of advance notice filings to each Commissioner and to appropriate members of the Commission Staff and Public Staff.
- (c) DEC, DEC, or Piedmont shall serve such advance notices on each party to Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and G-9, Sub 682, respectively, that has filed a request to receive them with the Commission within 30 days of the issuance of an order approving the Merger in this docket. These parties may participate in the advance notice proceedings without petitioning to intervene. Other interested persons shall be required to follow the Commission's usual intervention procedures.
- (d) To effectuate this Regulatory Condition, DEC, DEP, or Piedmont shall serve pertinent information on all parties at the time it serves the advance notice. During the advance notice period, a free exchange of information is encouraged, and parties may request additional relevant information. If DEC, DEP, or Piedmont objects to a discovery request, DEC, DEP, or Piedmont and the requesting party shall try to resolve the matter. If the parties are unable to resolve the matter, DEC, DEP, or Piedmont may file a motion for a protective order with the Commission.
- (e) The Public Staff shall investigate and file a response with the Commission no later than 15 days before the notice period expires. Any other interested party may also file a response or objection within 15 days before the notice period expires. DEC, DEP, or Piedmont may file a reply to the response(s).

- (f) The basis for any objection to the activities to be undertaken shall be stated with specificity. The objection shall allege grounds for a hearing, if such is desired.
- (g) If neither the Public Staff nor any other party files an objection to the activities within 15 days before the notice period expires, no Commission order shall be issued, and the Sub docket in which the advance notice was filed may be closed.
- (h) If the Public Staff or any other party files a timely objection to the activities to be undertaken by DEC, DEP, or Piedmont, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than two weeks after the objection is filed, and shall recommend that the Commission issue an order deciding how to proceed as to the objection. The Commission reserves the right to extend an advance notice period by order should the Commission need additional time to deliberate or investigate any issue. At the end of the notice period, if no objection has been filed by the Public Staff and no order, whether procedural or substantive, has been issued, DEC, DEP, Piedmont, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may execute the proposed agreement, proceed with the activity to be undertaken, or both, but shall be subject to any fully-adjudicated Commission order on the matter.
- (i) If the Commission schedules a hearing on an objection, the party filing the objection shall bear the burden of proof at the hearing.
- (j) The precedential effect of advance notice proceedings, like most issues of res judicata, will be decided on a fact-specific basis.
- (k) If some other Commission filing or Commission approval is required by statute, notice pursuant to a Regulatory Condition alone does not satisfy the statutory requirement.

SECTION XIV

COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT

The following Regulatory Conditions are intended to ensure that Duke Energy, DEC, DEP, Piedmont, and all other Affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in all of the Regulatory Conditions and the Code of Conduct in a timely, consistent, and effective manner.

14.1 Ensuring Compliance with Regulatory Conditions and Code of Conduct. Duke Energy, DEC, DEP, Piedmont, and all other Affiliates shall devote sufficient resources into the creation, monitoring, and ongoing improvement of effective internal compliance programs to ensure compliance with all Regulatory Conditions and the

DEC/DEP/Piedmont Code of Conduct, and shall take a proactive approach toward correcting any violations and reporting them to the Commission. This effort shall include the implementation of systems and protocols for monitoring, identifying, and correcting possible violations, a management culture that encourages compliance among all personnel, and the tools and training sufficient to enable employees to comply with Commission requirements.

14.2 Designation of Chief Compliance Officer. DEC, DEP, and Piedmont shall designate a chief compliance officer who will be responsible for compliance with the Regulatory Conditions and Code of Conduct. This person's name and contact information must be posted on DEC's, DEP's, and Piedmont's Internet Websites.

14.3 Annual Training. DEC, DEP, and Piedmont shall provide annual training on the requirements and standards contained within the Regulatory Conditions and Code of Conduct to all of their employees (including service company employees) whose duties in any way may be affected by such requirements and standards. New employees must receive such training within the first 60 days of their employment. Each employee who has taken the training must certify electronically or in writing that s/he has completed the training.

14.4 Report of Violations. If DEC, DEP, or Piedmont discover that a violation of their requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred then DEC, DEP, or Piedmont shall file a statement with the Commission in Docket Nos. E-7, Sub 1100C, E-2, Sub 1095C, and G-9, Sub 682C, respectively, describing the circumstances leading to that violation of DEC's, DEP's, or Piedmont's requirements or standards, as contained within the Regulatory Conditions and Code of Conduct, and the mitigating and other steps taken to address the current or any future potential violation.

SECTION XV

PROCEDURES FOR DETERMINING LONG-TERM SOURCES OF PIPELINE CAPACITY AND SUPPLY

The following Regulatory Conditions are intended to ensure the continued practices of DEC, DEP, and Piedmont for determining long-term sources of pipeline capacity and supply.

15.1 Cost-benefit Analysis. The appropriate source(s) for the interstate pipeline capacity and supply shall be determined by DEC and DEP on the basis of the benefits and costs of such source(s) specific to their respective electric customers. The appropriate source(s) for the interstate pipeline capacity and supply shall be determined by Piedmont on the basis of the specific benefits and costs of such source(s) specific to its natural gas customers, including electric power generating customers.

15.2 Ownership and Control of Contracts. Piedmont shall retain title, ownership, and management of all gas contracts necessary to ensure the provision of reliable Natural

Gas Services consistent with Piedmont's best cost gas and capacity procurement methodology.

**CODE OF CONDUCT
GOVERNING THE RELATIONSHIPS,
ACTIVITIES, AND TRANSACTIONS BETWEEN
AND AMONG THE PUBLIC UTILITY OPERATIONS
OF DEC, THE PUBLIC UTILITY OPERATIONS OF DEP,
THE PUBLIC UTILITY OPERATIONS OF PIEDMONT, DUKE ENERGY
CORPORATION, OTHER AFFILIATES, AND
THE NONPUBLIC UTILITY OPERATIONS OF DEC, DEP, AND PIEDMONT**

I. DEFINITIONS

For the purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of this Code of Conduct, Duke Energy and any business entity controlled by it are considered to be Affiliates of DEC, DEP, and Piedmont, and DEC, DEP, and Piedmont are considered to be Affiliates of each other.

Commission: The North Carolina Utilities Commission.

Confidential Systems Operation Information or CSOI: Nonpublic information that pertains to Electric Services provided by DEC or DEP, including but not limited to information concerning electric generation, transmission, distribution, or sales, and nonpublic information that pertains to Natural Gas Services provided by Piedmont, including but not limited to information concerning transportation, storage, distribution, gas supply, or other similar information.

Customer: Any retail electric customer of DEC or DEP in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

Customer Information: Non-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC, DEP, or Piedmont in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, or Piedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress, LLC, the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within the DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and Piedmont, and any successor company.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service to other suppliers.

Fuel and Purchased Power Supply Services: All fuel for generating electric power and purchased power obtained by DEC or DEP from sources other than DEC or DEP for the purpose of providing Electric Services.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good or service supplied by DEC, DEP, or Piedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding; (b) for each good or service supplied to DEC, DEP, or Piedmont, the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good or service supplied by DEC, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's, DEP's, or Piedmont's most recent general rate case proceeding, as applicable.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998, on June 22, 2011, and as amended and refiled on June 12, 2012.

Market Value: The price at which property, goods, or services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Piedmont.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering and billing, and standby service.

Non-affiliated Gas Marketer: An entity, not affiliated with DEC, DEP, or Piedmont, engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP, or Piedmont involving activities (including the sales of goods or services) that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS, other than a Utility Affiliate, DEC, DEP, or Piedmont.

Personnel: An employee or other representative of DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation, who is involved in fulfilling the business purpose of that entity.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Natural Gas Services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of DEP and is a subsidiary of Duke Energy, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

Regulatory Conditions: The conditions imposed by the Commission in connection with or related to the Merger.

Shared Services: The services that meet the requirements of the Regulatory Conditions approved in Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, or subsequent orders of the Commission and that the Commission has explicitly authorized DEC, DEP, and Piedmont to take from DEBS pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

Shipper: A Non-affiliated Gas Marketer, a municipal gas customer, or an end-user of gas.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, LLC (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), Florida Power Corporation, d/b/a Progress Energy Florida, LLC (DEF), and Duke Energy Ohio, Inc. (Duke Ohio).

II. GENERAL

This Code of Conduct establishes the minimum guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, and Piedmont, to the extent such relationships, activities, and transactions affect the public utility operations of DEC, DEP, and Piedmont in their respective service areas. DEC, DEP, Piedmont, and the other Affiliates are bound by this Code of Conduct pursuant to Regulatory Condition 6.1 approved by the Commission in Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682. This Code of Conduct is subject to modification by the Commission as the public interest may require, including, but not limited to, addressing changes in the organizational structure of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations; changes in the structure of the electric industry or natural gas industry; or other changes that warrant modification of this Code.

DEC, DEP, or Piedmont may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that circumstances in a particular case justify such a waiver.

III. STANDARDS OF CONDUCT

A. Independence and Information Sharing

1. Separation - DEC, DEP, Piedmont, Duke Energy, and the other Affiliates shall operate independently of each other and in physically separate locations to the maximum extent practicable; however, to the extent that the Commission has approved or accepted a service company-to-utility or utility-to-utility service agreement or list, DEC, DEP, Piedmont, Duke Energy, and the other Affiliates may operate as described in the agreement or list on file at the Commission. DEC, DEP, Piedmont, Duke Energy, and each of the other Affiliates shall maintain separate books and records. Each of DEC's, DEP's, and Piedmont's Nonpublic Utility Operations shall maintain separate records from those of DEC's, DEP's, and Piedmont's public utility operations to ensure appropriate cost allocations and any arm's-length-transaction requirements.

2. Disclosure of Customer Information:

- (a) Upon request, and subject to the restrictions and conditions contained herein, DEC, DEP, and Piedmont may provide Customer Information to Duke Energy or another Affiliate under the same terms and conditions that apply to the provision of such information to non-Affiliates. In addition, DEC and DEP may provide Customer Information to their respective Nonpublic Utility Operations under the same terms and conditions that apply to the provision of such information to non-Affiliates.
- (b) Except as provided in Section III.A.2.(f), Customer Information shall not be disclosed to any Affiliate or non-affiliated third party without the Customer's consent, and then only to the extent specified by the Customer. Consent to disclosure of Customer Information to Affiliates of DEC, DEP, and Piedmont or to DEC's or DEP's Nonpublic Utility Operations may be obtained by means of written, electronic, or recorded verbal authorization upon providing the Customer with the information set forth in Attachment A; provided, however, that DEC, DEP, and Piedmont retain such authorization for verification purposes for as long as the authorization remains in effect. Written, electronic, or recorded verbal authorization or consent for the disclosure of Piedmont's Customer Information to Piedmont's Nonpublic Utility Operations is not required.
- (c) If the Customer allows or directs DEC, DEP, or Piedmont to provide Customer Information to Duke Energy, another Affiliate, or to DEC's or DEP's Nonpublic Utility Operations, then DEC, DEP, or Piedmont shall ask if the Customer would like the Customer Information to be provided to one or more non-Affiliates. If the Customer directs DEC, DEP, or Piedmont to provide the Customer Information to one or more non-Affiliates, the Customer Information shall be disclosed to all entities designated by the Customer contemporaneously and in the same manner.
- (d) Section III.A.2. shall be permanently posted on DEC's, DEP's and Piedmont's website(s).
- (e) No DEC, DEP, or Piedmont employee who is transferred to Duke Energy or another Affiliate shall be permitted to copy or otherwise compile any Customer Information for use by such entity except as authorized by the Customer pursuant to a signed Data Disclosure Authorization. DEC, DEP, and Piedmont shall not transfer any employee to Duke Energy or another Affiliate for

the purpose of disclosing or providing Customer Information to such entity.

- (f) Notwithstanding the prohibitions in this Section III.A.2.:
 - (i) DEC, DEP, and Piedmont may disclose Customer Information to DEBS, any other Affiliate, or a non-affiliated third party without Customer consent to the extent necessary for the Affiliate or non-affiliated third party to provide goods or services to DEC, DEP, or Piedmont and upon the written agreement of the other Affiliate or non-affiliated third-party to protect the confidentiality of such Customer Information. To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility-to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed.
 - (ii) DEC and DEP may disclose Customer Information to their Nonpublic Utility Operations without Customer consent to the extent necessary for the Nonpublic Utility Operations to provide goods and services to DEC or DEP and upon the written agreement of the Nonpublic Utility Operations to protect the confidentiality of such Customer Information.
 - (iii) DEC, DEP, and Piedmont may disclose Customer Information to a state or federal regulatory agency or court of competent jurisdiction if required in writing to do so by the agency or court.
- (g) DEC, DEP, and Piedmont shall take appropriate steps to store Customer Information in such a manner as to limit access to those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality.
- (h) DEC, DEP, and Piedmont shall establish guidelines for its employees and representatives to follow with regard to complying with this Section III.A.2.
- (i) No DEBS employee may use Customer Information to market or sell any product or service to DEC's, DEP's, or Piedmont's Customers, except in support of a Commission-approved rate schedule or program or a marketing effort managed and supervised directly by DEC, DEP, or Piedmont.

- (j) DEBS employees with access to Customer Information must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the Customer Information by employees of DEBS that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC and DEP.
- (k) Should any inappropriate disclosure of DEC, DEP, or Piedmont Customer Information occur at any time, DEC, DEP, or Piedmont shall promptly file a statement with the Commission describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences.

3. The disclosure of Confidential Systems Operation Information of DEC, DEP, and Piedmont shall be governed as follows:

- (a) Such CSOI shall not be disclosed by DEC, DEP, or Piedmont to an Affiliate or a Nonpublic Utility Operation unless it is disclosed to all competing non-Affiliates contemporaneously and in the same manner. Disclosure to non-Affiliates is not required under the following circumstances:
 - (i) The CSOI is provided to employees of DEC or DEP for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998.
 - (ii) The CSOI is necessary for the performance of services approved to be performed pursuant to one or more Affiliate utility-to-utility service agreements.
 - (iii) A state or federal regulatory agency or court of competent jurisdiction over the disclosure of the CSOI requires the disclosure.
 - (iv) The CSOI is provided to employees of DEBS pursuant to a service agreement filed with the Commission pursuant to G.S. 62-153.
 - (v) The CSOI is provided to employees of DEC's, DEP's, or Piedmont's Utility Affiliates for the purpose of sharing best practices and otherwise improving the provision of regulated utility service.

- (vi) The CSOI is provided to an Affiliate pursuant to an agreement filed with the Commission pursuant to G.S. 62-153, provided that the agreement specifically describes the types of CSOI to be disclosed.
 - (vii) Disclosure is otherwise essential to enable DEC or DEP to provide Electric Services to their Customers or for Piedmont to provide Natural Gas Services to its Customers.
 - (viii) Disclosure of the CSOI is necessary for compliance with the Sarbanes-Oxley Act of 2002.
- (b) Any CSOI disclosed pursuant Section III.A.3.(a)(i)-(viii) shall be disclosed only to employees that need the CSOI for the purposes covered by those exceptions and in as limited a manner as possible. The employees receiving such CSOI must be prohibited from acting as conduits to pass the CSOI to any Affiliate(s) and must have explicitly agreed to protect the confidentiality of such CSOI.
- (c) For disclosures pursuant to Section III.A.3.(a)(vii) and (viii), DEC, DEP, and Piedmont shall include in their annual affiliated transaction reports the following information:
- (i) The types of CSOI disclosed and the name(s) of the Affiliate(s) to which it is being, or has been, disclosed;
 - (ii) The reasons for the disclosure; and
 - (iii) Whether the disclosure is intended to be a one-time occurrence or an ongoing process.

To the extent a disclosure subject to the reporting requirement is intended to be ongoing, only the initial disclosure and a description of any processes governing subsequent disclosures need to be reported.

- (d) DEC, DEP, Piedmont, and DEBS employees with access to CSOI must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the CSOI by employees that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC, DEP, and Piedmont.

- (e) Should the handling or disclosure of CSOI by DEBS, or another Affiliate or Nonpublic Utility Operation, or its respective employees, result in (i) a violation of DEC's or DEP's FERC Statement of Policy and Code of Conduct (FERC Code), 18 CFR 358 - Standards of Conduct for Transmission Providers (Transmission Standards), or any other relevant FERC standards or codes of conduct, (ii) the posting of such data on an Open Access Same-Time Information System (OASIS) or other Internet website, or (iii) other public disclosure of the data, DEC or DEP shall promptly file a statement with the Commission in Docket No. E-7, Sub 1100C, and E-2, Sub 1095C, respectively, describing the circumstances leading to such violation, posting, or other public disclosure describing the circumstances leading to such violation, posting, or other public disclosure, any data required to be posted or otherwise publicly disclosed, and the steps taken to mitigate the effects of the current and prevent any future potential violation, posting, or other public disclosure.
- (f) Should any inappropriate disclosure of CSOI occur at any time, DEC, DEP, or Piedmont shall promptly file a statement with the Commission in Docket No. E-7, Sub 1100C, E-2, Sub 1095C, or G-9, Sub 682C, respectively, describing the circumstances of the disclosure, the CSOI disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences.
- (g) Unless publicly noticed and generally available, should the FERC Code, the Transmission Standards, or any other relevant FERC standards or codes of conduct be eliminated, amended, superseded, or otherwise replaced, DEC and DEP shall file a letter with the Commission in Docket Nos. E-7, Sub 1100E, and E-2, Sub 1095E, describing such action within 60 days of the action, along with a copy of any amended or replacement document.

B. Nondiscrimination

1. DEC's, DEP's, and Piedmont's employees and representatives shall not unduly discriminate against non-Affiliated entities.

2. In responding to requests for Electric Services, Natural Gas Services, or both, DEC, DEP, and Piedmont shall not provide any preference to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, or to any customers of such an entity, as compared to non-Affiliates or their customers. Moreover, neither DEC, DEP, Piedmont, Duke Energy, nor any other Affiliates shall represent to any person or entity that Duke Energy, another Affiliate, or a Nonpublic Utility Operation will receive any such preference.

3. DEC, DEP, and Piedmont shall apply the provisions of their respective tariffs equally to Duke Energy, the other Affiliates, the Nonpublic Utility Operations, and non-Affiliates.

4. DEC, DEP, and Piedmont shall process all similar requests for Electric Services, Natural Gas Services, or both, in the same timely manner, whether requested on behalf of Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity.

5. No personnel or representatives of DEC, DEP, Piedmont, Duke Energy, or another Affiliate shall indicate, represent, or otherwise give the appearance to another party that Duke Energy or another Affiliate speaks on behalf of DEC, DEP, or Piedmont; provided however, that this prohibition shall not apply to employees of DEBS providing Shared Services or to employees of another Affiliate to the extent explicitly provided for in an affiliate agreement that has been accepted by the Commission. In addition, no personnel or representatives of a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that they speak on behalf of DEC's or DEP's regulated public utility operations.

6. No personnel or representatives of DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that any advantage to that party with regard to Electric Services or Natural Gas Services exists as the result of that party dealing with Duke Energy, another Affiliate, or a Nonpublic Utility Operation, as compared with a non-Affiliate.

7. DEC, DEP, and Piedmont shall not condition or otherwise tie the provision or terms of any Electric Services or Natural Gas Services to the purchasing of any goods or services from, or the engagement in business of any kind with, Duke Energy, another Affiliate, or a Nonpublic Utility Operation.

8. When any employee or representative of DEC or DEP receives a request for information from or provides information to a Customer about goods or services available from Duke Energy, another Affiliate, or a Nonpublic Utility Operation, the employee or representative shall advise the Customer that such goods or services may also be available from non-Affiliated suppliers.

9. Disclosure of Customer Information to Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity shall be governed by Section III.A.2. of this Code of Conduct.

10. Unless otherwise directed by order of the Commission, electric generation shall not receive a priority of use from Piedmont that would supersede or diminish

Piedmont's provision of service to its human needs firm residential and commercial customers.

11. Piedmont shall file an annual report with the Commission summarizing all requests or inquiries for Natural Gas Services made by a non-utility generator, Piedmont's response to the request, and the status of the inquiry.

C. Marketing

1. The public utility operations of DEC, DEP, and Piedmont may engage in joint sales, joint sales calls, joint proposals, or joint advertising (a joint marketing arrangement) with their Affiliates and with their Nonpublic Utility Operations, subject to compliance with other provisions of this Code of Conduct and any conditions or restrictions that the Commission may hereafter establish. DEC, DEP, and Piedmont shall not otherwise engage in such joint activities without making such opportunities available to comparable third parties.

2. Neither Duke Energy nor any of the other Affiliates shall use the names or logos of DEC, DEP, or Piedmont in any communications without the following disclaimer:

- (a) "[Duke Energy Corporation/Affiliate) is not the same company as [DEC/DEP/Piedmont], and [Duke Energy Corporation/Affiliate) has separate management and separate employees";
- (b) "[Duke Energy Corporation/Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission";
- (c) "Purchasers of products or services from [Duke Energy Corporation/Affiliate] will receive no preference or special treatment from [DEC/DEP/Piedmont]"; and
- (d) "A customer does not have to buy products or services from [Duke Energy Corporation/Affiliate] in order to continue to receive the same safe and reliable electric service from [DEC/DEP] or natural gas service from Piedmont."

3. Nonpublic Utility Operations may not use the names or logos of DEC, DEP, or Piedmont in communications without the following disclaimer:

"[Name of product or service being offered by Nonpublic Utility Operation] is not part of the regulated services offered by [DEC/DEP/Piedmont] and is not in any way sanctioned by the North Carolina Utilities Commission."

4. In addition, DEC's and DEP's Nonpublic Utility Operations may not use the names or logos of DEC or DEP in any communications without the following disclaimers:

- (a) "Purchasers of [name of product or service being offered by Nonpublic Utility Operation] from [Nonpublic Utility Operation] will receive no preference or special treatment from [DEC/DEP]"; and
- (b) "A customer does not have to buy this product or service from [Nonpublic Utility Operation] in order to continue to receive the same safe and reliable electric service from [DEC/DEP]."

The required disclaimers in this Section III.C.4. must be sized and displayed in a way that is commensurate with the name and logo so that the disclaimer is at least the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

D. Transfers of Goods and Services, Transfer Pricing, and Cost Allocation

1. Cross-subsidies involving DEC, DEP, or Piedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations are prohibited.

2. All costs incurred by personnel or representatives of DEC, DEP, or Piedmont for or on behalf of Duke Energy, other Affiliates, or the Nonpublic Utility Operations shall be charged to the entity responsible for the costs.

3. The following conditions shall apply as a general guideline to the transfer prices charged for goods and services, including the use or transfer of personnel, exchanged between and among DEC, DEP, or Piedmont, and Duke Energy, the other Non-Utility Affiliates, and the Nonpublic Utility Operations, to the extent such prices affect DEC's, DEP's, or Piedmont's operations or costs of utility service:

- (a) Except as otherwise provided for in this Section III.D., for untariffed goods and services provided by DEC, DEP, or Piedmont to Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, the transfer price paid to DEC, DEP, or Piedmont shall be set at the higher of Market Value or DEC's, DEP's, or Piedmont's Fully Distributed Cost.
- (b) Except as otherwise provided for in this Section III.D., for goods and services provided, directly or indirectly, by Duke Energy, a Non-Utility Affiliate other than DEBS, or a Nonpublic Utility Operation to DEC, DEP, or Piedmont, the transfer price(s) charged by Duke Energy, the Non-Utility Affiliate, and the Nonpublic Utility Operation to DEC, DEP, or Piedmont shall be

set at the lower of Market Value or Duke Energy's, the Non-Utility Affiliate's, or the Nonpublic Utility Operation's Fully Distributed Cost(s). If DEC, DEP, or Piedmont do not engage in competitive solicitation and instead obtain the goods or services from Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, DEC, DEP, and Piedmont shall implement adequate processes to comply with this Code provision and related Regulatory Conditions and ensure that in each case DEC's, DEP's, and Piedmont's Customers receive service at the lowest reasonable cost, unless otherwise directed by order of the Commission. For goods and services provided by DEBS to DEC, DEP, Piedmont, and Utility Affiliates, the transfer price charged shall be set at DEBS' Fully Distributed Cost.

- (c) Tariffed goods and services provided by DEC, DEP, and Piedmont to Duke Energy, other Affiliates, or a Nonpublic Utility Operation shall be provided at the same prices and terms that are made available to Customers having similar characteristics with regard to Electric Services or Natural Gas Services under the applicable tariff.
- (d) With the exception of gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, untariffed non-power, non-generation, or non-fuel goods and services provided by DEC, DEP, or Piedmont to DEC, DEP, Piedmont, or the Utility Affiliates or by the Utility Affiliates to DEC, DEP, or Piedmont, shall be transferred at the supplier's Fully Distributed Cost, unless otherwise directed by order of the Commission.
- (e) All Piedmont deliveries to DEC and DEP pursuant to intrastate negotiated sales or transportation arrangements and combinations of sales and transportation transactions shall be at the same price and terms that are made available to other Shippers having comparable characteristics, such as nature of service (firm or interruptible, sales or transportation), pressure requirements, nature of load (process/heating/electric generation), size of load, profile of load (daily, monthly, seasonal, annual), location on Piedmont's system, and costs to serve and rates. Piedmont shall maintain records in sufficient detail to demonstrate compliance with this requirement.
- (f) All gas supply transactions, interstate transportation and storage transactions, and combinations of these transactions, between DEC or DEP and Piedmont shall be at the fair market value for similar transactions between non-affiliated third parties. DEC, DEP,

and Piedmont shall maintain records, such as published market price indices, in sufficient detail to demonstrate compliance with this requirement.

- (g) All of the margins, also referred to as net compensation, received by Piedmont on secondary market sales to DEC and DEP shall be recorded in Piedmont's Deferred Gas Cost Accounts and shall flow through those accounts for the benefit of ratepayers. None of the margins on secondary market sales by Piedmont to DEC and DEP shall be included in the secondary market transactions subject to the sharing mechanism on secondary market transactions approved by the Commission in its Order Approving Stipulation, dated

December 22, 1995, in Docket No. G-100, Sub 67. The sharing percentage on secondary market sales shall not be considered in determining the prudence of such transactions.

4. To the extent that DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations receive Shared Services from DEBS (or its successor), these Shared Services may be jointly provided to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations on a fully distributed cost basis, provided that the taking of such Shared Services by DEC, DEP, and Piedmont is cost beneficial on a service-by-service (e.g., accounting management, human resources management, legal services, tax administration, public affairs) basis to DEC, DEP, and Piedmont. Charges for such Shared Services shall be allocated in accordance with the cost allocation manual filed with the Commission pursuant to Regulatory Condition 5.5, subject to any revisions or other adjustments that may be found appropriate by the Commission on an ongoing basis.

5. DEC, DEP, Piedmont, and their Utility Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of electricity or ancillary services intended for resale unless such purchase is made pursuant to a Commission-approved contract or service agreement), if such joint purchases result in cost savings to DEC's, DEP's, and Piedmont's Customers. DEC, DEP, Piedmont, and their Utility Affiliates may capture economies-of-scale in joint purchases of coal and natural gas, if such joint purchases result in cost savings to DEC's, DEP's, and Piedmont's Customers. All joint purchases entered into pursuant to this section shall be priced in a manner that permits clear identification of each participant's portion of the purchases and shall be reported in DEC's, DEP's, and Piedmont's affiliated transaction reports filed with the Commission.

6. All permitted transactions between DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be recorded and accounted for in accordance with the cost allocation manual required to be filed with the Commission pursuant to Regulatory Condition 5.5 and with Affiliate agreements accepted by the Commission or otherwise processed in accordance with North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

7. Costs that DEC, DEP, and Piedmont incur in assembling, compiling, preparing, or furnishing requested Customer Information or CSOI for or to Duke Energy, other Affiliates, Nonpublic Utility Operations, or non-Affiliates (other than the Customer or the Customer's designated representative or agent) shall be recovered from the requesting party pursuant to Section III.D.3. of this Code of Conduct.

8. Any technology or trade secrets developed, obtained, or held by DEC, DEP, or Piedmont in the conduct of regulated operations shall not be transferred to Duke Energy, another Affiliate, or a Nonpublic Utility Operation without just compensation and the filing of 60-days prior notification to the Commission. DEC, DEP, and Piedmont are not required to provide advance notice for such transfers to each other and may request a waiver of this requirement from the Commission with respect to such transfers to Duke Energy, a Utility Affiliate, a Non-Utility Affiliate, or a Nonpublic Utility Operation. In no case, however, shall the notice period requested be less than 20 business days.

9. DEC, DEP, and Piedmont shall receive compensation from Duke Energy, other Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

E. Regulatory Oversight

1. The requirements regarding affiliate transactions set forth in G.S. 62-153 shall continue to apply to all transactions between DEC, DEP, Piedmont, Duke Energy, and the other Affiliates.

2. The books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff as provided in G.S. 62-34, 62-37, and 62-51.

3. If Piedmont supplies any Natural Gas Services, with the exception of Natural Gas Services provided pursuant to Commission-approved contracts or service agreements, used by either DEC or DEP to generate electricity, DEC or DEP, as applicable, shall file a report with the Commission in its annual fuel and fuel-related cost recovery case demonstrating that the purchase was prudent and the price was reasonable.

4. To the extent North Carolina law, the orders and rules of the Commission, and the Regulatory Conditions permit Duke Energy, an Affiliate, or a Nonpublic Utility Operation to supply DEC, DEP, or Piedmont with Natural Gas Services or other Fuel and Purchased Power Supply Services used by DEC or DEP to provide Electric Services to Customers, and to the extent such Natural Gas Services or other Fuel and Purchased Power Supply Services are supplied, DEC or DEP, as applicable, shall demonstrate in its annual fuel adjustment clause proceeding that each such acquisition was prudent and the price was reasonable.

F. Utility Billing Format

To the extent any bill issued by DEC, DEP, Piedmont, Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party includes charges to Customers for Electric Services or Natural Gas Services and non-Electric Services, non-Natural Gas Services, or any combination of such services, from Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party, the charges for Electric Services and Natural Gas Services shall be separated from the charges for any other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services and Natural Gas Services will not be terminated for failure to pay for any other services billed.

G. Complaint Procedure

1. DEC, DEP, and Piedmont shall establish procedures to resolve potential complaints that arise due to the relationship of DEC, DEP, and Piedmont with Duke Energy, the other Affiliates, and the Nonpublic Utility Operations. The complaint procedures shall provide for the following:

- (a) Verbal and written complaints shall be referred to a designated representative of DEC, DEP, or Piedmont.
- (b) The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.
- (c) DEC, DEP, or Piedmont shall investigate the complaint and communicate the results or status of the investigation to the complainant within 60 days of receiving the complaint.
- (d) DEC, DEP, and Piedmont shall each maintain a log of complaints and related records and permit inspection of documents (other than those protected by the attorney/client privilege) by the Commission, its staff, or the Public Staff.

2. Notwithstanding the provisions of Section III.G.1., any complaints received through Duke Energy's EthicsLine (or successor), which is a confidential mechanism available to the employees of the Duke Energy holding company system, shall be handled in accordance with procedures established for the EthicsLine.

3. These complaint procedures do not affect a complainant's right to file a formal complaint with the Commission or otherwise communicate with the Commission or the Public Staff regarding a complaint.

H. Natural Gas/Electricity Competition

DEC, DEP and Piedmont shall continue to compete against all energy providers, including each other, to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas. The competition between DEC or DEP and Piedmont shall be at a level that is no less than that which existed prior to the Merger. Without limitation as to the full range of potential competitive activity, DEC, DEP and Piedmont shall maintain the following minimum standards:

1. Piedmont will make all reasonable efforts to extend the availability of natural gas to as many new customers as possible.
2. In determining where and when to extend the availability of natural gas, Piedmont will at a minimum apply the same standards and criteria that it applied prior to the Merger.
3. In determining where and when to extend the availability of natural gas, Piedmont will make decisions in accordance with the best interests of Piedmont, rather than the best interest of DEC or DEP.
4. To the extent that either the natural gas industry or the electricity industry is further restructured, DEC, DEP, and Piedmont will undertake to maintain the full level of competition intended by this Code of Conduct subject to the right of DEC, DEP, Piedmont or the Public Staff to seek relief from or modifications to this requirement by the Commission.

CODE OF CONDUCT ATTACHMENT A

DEC/DEP/PIEDMONT CUSTOMER INFORMATION DISCLOSURE AUTHORIZATION

For Disclosure to Affiliates:

DEC's/DEP's/Piedmont's Affiliates offer products and services that are separate from the regulated services provided by DEC/DEP/Piedmont. These services are not regulated by the North Carolina Utilities Commission. These products and services may be available from other competitive sources.

The Customer authorizes DEC/DEP/Piedmont to provide any data associated with the Customer account(s) residing in any DEC/DEP/Piedmont files, systems or databases **[or specify specific types of data]** to the following Affiliate(s) _____. DEC/DEP/Piedmont will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

For Disclosure to Nonpublic Utility Operations:

DEC/DEP offers optional, market-based products and services that are separate from the regulated services provided by DEC/DEP. These services are not regulated by the North Carolina Utilities Commission. These products and services may be available from other competitive sources.

The Customer authorizes DEC/DEP to use any data associated with the Customer account(s) residing in any DEC/DEP files, systems or databases **[or specify types of data]** for the purpose of offering and providing energy-related products or services to the Customer. DEC/DEP will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.